Supreme Court, U. S.
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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-538

UNITED STATES OF AMERICA, PETITIONER

v.

HENRY OGLE WATSON, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 4, 1974
CERTIORARI GRANTED FEBRUARY 18, 1975

In the Supreme Court of the United States

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CRIMINAL DOCKET

UNITED STATES DISTRICT COURT

No. 11056

THE UNITED STATES

vs.

HENRY OGLE WATSON

Date	*Proceedings*
9/11/72	Ent ord for flg Indict & fxg bail at $3,500. P/R. Fld. Indict. Md. JS-2 (MML). Fld $3,500.00 P/R bond posted 8/23/72 bef U.S. Mag. Ralph J. Geffen at L.A., Calif. Fld Not of Flg Bond.
10/ 2/72	Crt appts Fed Pub Def Land Wayland as cnl for deft. Fld deft's stmt of Constitutional Rights. Deft Arr & T/N as chgd. Crt ords this case assigned to the Cal of Judge Stephens and cont matter to 2pm this date for fur prcdgs. (Mag RJG).
10/ 2/72	Arr, Plea & Setting For Trial: Ent plea of Not Guilty all cts. Deft duly arr & states his true name is as shown on the Indict. Ord case set for trial 10/25/72 9:30am. (ALS)
10/19/72	Fld Pltf's Trial Memo. Fld Govt's Proposed Jury instructions.
10/25/72	Ord motns of deft to suppress evid & stmt are Denied. Fld substitn of Attys Michael Nasatir in place of Land Wayland. Fld order shortening time & hear motn to suppress. Fld Motn to suppress & for cont of trial. Fld suppl pts & auths on Motn to Suppress JURY TRIAL (1st Day) Sw wits, Imp Jury, govt mks open stmt. mkd exhbts, ord cont to 10/26/72, 9:30 am for fur J/T. (ALS).
10/26/72	JURY TRIAL (2nd Day) deft moves to suppress certain exhbts & the Crt Denies. All pres, govt rests. Deft moves for judgmt of acquittal and Mistrial and Crt denies both motns. Both sides rest. Govt moves for a Crt ord for an exemplar of deft's handwriting or printing and the Crt grants said motn but after deft's opposition of Crt's ruling, the Crt now denies said motn. Ord case cnt to 10/27/72, 9am for fur J/T. Sw wits & fld exhbts. (see separate list)

10/27/72	FUR JURY TRIAL (3rd Day): Both sides argue. All pres including the jury. Jury taken to lunch at Govt expense, by bailiff John Contos & Nick Robertson. Jury retires to deliberate. Crt convenes w/o jury & deft mvs for mis-trial & the Crt denied said motn. The Crt excused the alternate & sw bailiff, John Contos. Jury retires to deliberate. Rec'd note from jury foreman stating jury wants reporter's notes read. The Crt excused the jury until 9am 10/30/72 & ords case cont for fur trial to that time. (ALS)
11/ 6/72	Fld Notc of Motn & Motn for new trial retnble 11/13/72, 2pm.
10/30/72	FUR JURY TRIAL (4th Day): Reporter reads a portion of the notes to the jury which is pres in the box. Jury retires, to resume deliberation. Note from Jury Foreman read stating jury has reached a Verdict. Clerk reads Verdict of Guilty to cts 1 & 3 & N/G to ct. 2. Ord case set for sent cts 1 & 3 11/13/72 at 2 pm. (ALS)
11/13/72	Fld NOTICE OF APPEAL of deft Henry Ogle Watson and paid $5.00 flg fee as cnsl retained. Issd copies to (ALS), U.S. Atty, U.S. Mars, P/O, deft Henry Ogle Watson, Adm Clerk, File & orig & 2 copies to Appeals Section.
11/13/72	Fld Mot & Not of Mot of deft Henry Ogle Watson for bail pending appeal with affids in suppt, & pts & auths. (No retnble date shown & bail given in Court)
11/13/72	Fld $2,500.00 P/R Bond on APPEAL as to deft Henry Ogle Watson posted 11/13/72 bef & approved by Edw. F. Drew placing said deft on bond on appeal pending appeal. Issd abstr to U.S. Mars.
	SENT: 3 yrs on each of cts 1 & 3 to run concurr. Purs to 18/4208(a)(2). Deft speaks, his cnsl speaks & deft is advised of his right to appeal appeal purs to Rule 32 (a)(2) FRCP. Crt recommends consideration for early parole taking his military service & educational background into consid Fld Judgmnt & issd copies. Ent 11/15/72 Md JS-3 as to deft Watson. (ALS) Deft moves for court to set bail on appeal. Crt ords P/R bond in amt of $2,500.00 P/R set on deft outcome of his appeal. (ALS)
11/21/72	LODGED NOTICE OF APPEAL as to deft Henry Ogle Watson & Orders in Criminal Forma Pauperis cases with Designation of Record of Appeal & Ord (UNSIGNED) for deft to proceed In Forma Pauperis. (See Notice of Appeal above fld 11/13/72).
11/28/72	Fld Order (ALS) dismissing count 4 of the Indictment as to deft Henry Ogle Watson. (Watson found guilty as to counts 1 & 3 & Not Guilty as to count 2 on 10/30/72.) Issd copies.
2/ 5/73	Fld ord denying mot for lv to appeal informa pauperis and cert. Mld copy to deft's counsel and to AUSA. (ALS)
2/13/73	Fld NOTC OF APPEALS AS TO DEFT Watson from the ord denying motn for lv to appeal in forma pauperis & issd cpys to Judge ALS, U.S. Atty, U.S. Mars, U.S.P.O., Deft & Cnsl (retained) Adm. Clerk & Orig & 2 copies to Appeal Clerk.

3/29/73	Rec'd fr C/A cc of ord of C/A permtg pauper appeal (gave cy to Ct Rptr ET)
3/30/73	Fld Order nunc pro tunc. Ord that ord of 2/5/73 is hereby and nunc pro tunc to contain the within clarifications of the evid adduced at trial (See nunc pro tunc ord. (ALS)
6/13/73	Fld desig of record on appeal.
1/ 8/74	Rec'd fr C/A orig rec on appeal along with pltf's exhbts 1 thru 6 and orig rptr's transcript of prdgschad on Oct. 25, 26, 27, 1972 (1 vol) Mld recpt. Rec'd fr C/A cc of jdgmnt of C/A reversing jdgmnt of USDC (gave to Ct Clerk CJ)
1/15/74	Returned per request of C/A cc of C/a revrsng jdgmnet of USDC.
9/17/74	Rec'f fr C/A cc of jdgmnt of C/A revsng jdgmnt of USDC (gave to Ct Clerk CJ) Mld recpt.
10/24/74	Ord flg & sprdg of jdgmt of US Court of Appeals revers jdgmt in this court be placed on cal for hrg 11/4/74 at 9:30 AM (ALS) jk
11/ 4/74	Ord hrg & flg of jdgmt of the USCA reversing the jdgmnt of this court. Fld & ent 3/20/74 cont to 11/25/74 at 9:30 AM. (ALS) jk
12/ 2/74	Rec'd frm C/A cc order denying Motion for Withdrawal of Mandate for Stay of Mandate (cy to CJ)
1/ 6/75	Ord hrg on spreading judgment of USCA cont to 3-31-75, 9:30 am. (ALS) jp

Docket From United States Court of Appeals

No. 73-1539

Date	*Proceedings*
3/27/73	Filed order (C) granting appellant leave to proceed with appeal in forma pauperis. The retained trial attorney will be appointed to represent appellant in this court. The attorney and the reporter are directed to execute and return forthwith CJA Form 21 for authorization of a reporter's transcript. (jn)
3/27/73	Filed order (C) appointing counsel Michael D. Nasatir, to represent appellant.
3/27/73	DOCKETED CAUSE & ENTERED APPEARANCES OF COUNSEL (jn)
3/27/73	Filed CJA 21 (C) authorizing preparation of transcript. (jn)
5/25/73	Recvd. orig. & 3 applt's motion for ext of time to file opening brief to C. (rg)
5/29/73	FILED MOTION AND ORDER (C) EXTENDING TIME TO file & transmit the record on appeal to JUNE 14, 1973 & brief is due 14 days thereafter. (DUE DATE) JUNE 28, 1973. *IT IS NOTED THAT CJA FORM 21 WAS FILED ON MARCH 27, 1973.* (rg)

6/15/73	FILED CERT RECORD ON APPEAL IN FOUR VOLUMES: VOL. I, PLEADINGS; ORIG. & THREE COPIES: VOL. II, REPORTER'S TRANSCRIPT; ORIG. & THREE COPIES: VOL. III, REPORTER'S TRANSCRIPT; ORIG. & THREE COPIES: VOL. IV, REPORTER'S TRANSCRIPT: ORIG. & THREE COPIES. *FILED ORIGINAL EXHIBITS IN LPS* •
6/19/73	Sent copy of four volume record to Appellant Counsel.
6/19/73	Appellant's Brief due July 29, 1973.
	Calendar Case for Hearing for October, 1973, Los Angeles
7/31/73	FILED 4 APPELLANTS BRIEFS
9/ 5/73	FILED 25 APPELLEES BRIEFS (to panel) abs
10/ 1/73	ARGUED & SUBMITTED TO: ELY, GOODWIN, CJJ, MURRAY, DJ (jn)
12/12/73	ORDERED OPINION (MURRAY) & DISSENTING OPINION (GOODWIN) FILED & JUDG TO BE FILED & ENTD (jn)
12/12/73	Filed opinion—reversed
12/12/73	Filed & Entered Judgment (jn)
1/ 4/74	1974 ORIGINAL FILES & EXHIBITS RTD.
1/ 4/74	1974 JUDGMENT ISSUED TO CLERK U.S.
1/ 8/74	Rec'd orig & 3 appellee's motion for ext. of time to file pet for rehearing and rehearing en banc in excess of 15 pgs. To: E,G,CJJ, *Murray*, DJ th
1/15/74	RECEIVED RECEIPT for judgment and records
1/14/74	Filed Order (Ely) granting an ext of time to January 25, 1974 for filing petition for rehearing & rehearing en banc; further Ordered that said petition may exceed fifteen (15) pages in length by no more than ten (10) pages. cs
1/15/74	Called Dist Ct for the return of certified copy of mandate (Scovil) rh
1/16/74	Recvd. certified copy of mandate from Clk, Dist Ct. rh
1/18/74	Recvd. appellee motion for recall of mandate (not submitted to court—mandate recalled 1/15 pursuant to order of 1/14) rh
1/28/74	Filed orig & 3 appellee's motion for extension of time in which to file petition for rehearing. To: E, G, CJJ, Murray, DJ th
2/ 1/74	Filed order (Ely) granting appellee's motion for ext. of time to Feb. 11, 1974 in which to file petition for rehearing. th
2/13/74	Filed orig & 24 appellee's petition for rehearing with suggestion for rehearing en banc. To: ALL ACTIVE JUDGES. th
3/ 8/74	Filed Order (Ely, Goodwin & Murray) withdrawing the court's opinion filed 12/12/73. cs Prepared JS-34 Re-opened case (jn)
3/20/74	ORDERED OPINION (MURRAY DJ) FILED & DISSENTING OPINION GOODWIN FILED & JUDG TO BE FILED & ENTD (jn)

3/20/74	Filed opinion—reversed
3/20/74	Filed & Entered Judgment (jn)
3/20/74	Filed Order (Ely, Goodwin & Murray) dismissing appellee's petition for rehearing with suggestion for rehearing en banc as moot. cs
4/ 1/74	Filed orig & 3 copies aple's motion for ext of time to file petition for rehearing & rehearing en banc in excess of fifteen pages. TO: E G Murray gb
4/10/74	Filed Order (E) granting aple's an ext of time to and including April 26, 1974, to file petition for rehearing & suggestion for rehearing en banc in excess of fifteen pages. gb
4/29/74	Filed aple motion for ext of time to file petition for rehearing & suggestion for rehearing en banc. TO: E G Murray gb
4/30/74	Recvd aple petition for rehearing & suggestion for rehearing en banc. TO: E G Murray pending directions from panel. gb
5/ 2/74	Filed Order (E) granting aple's an ext of time to and including May 1, 1974, to file petition for rehearing and rehearing en banc. It is further Order that said petition shall not exceed twenty-five (25) pages in length. gb Per telephone call with Ely, ok to file petition consisting of 27 pages.
5/ 2/74	Filed aple's petition for rehearing with suggestion for rehearing en banc. TO ALL ACTIVE JUDGES gb
9/ 5/74	Filed order (E, G & Murray) denying the petition for rehearing and rejecting the suggestion for rehearing en banc. jr
9/16/74	ISSUED JUDGMENT
10/ 7/74	Recvd. S.C. notice re: ext of time to Nov. 4th in which to file pet for writ of Cert rh
11/ 7/74	Filed aple's motion for withdrawal of previously issued mandate and for stay of mandate to (Ely, Goodwin & Murray). jr
11/18/74	Filed SC notice re: filing pet for cert 11/4/74 SC #74-538.
11/21/74	Filed order (Ely, Goodwin & Murray) the aple's motion for withdrawal of mandate, for stay of mandate, etc., is denied. jr
2/24/75	Filed certified copy of SC order granting pet for writ of cert 2/18/75 (panel) rh

United States District Court for the Central District of California

September 1972 Grand Jury

No. 11056 CD

UNITED STATES OF AMERICA, PLAINTIFF

v.

HENRY OGLE WATSON, DEFENDANT

Indictment—18 U.S.C. § 1708: Possession of Stolen Mail

The Grand Jury charges:

COUNT ONE

(18 U.S.C. § 1708)

On or about August 23, 1972, in Los Angeles County, within the Central District of California, defendant HENRY OGLE WATSON unlawfully had in his possession the contents of a letter which had been stolen from the mail, addressed to Marlene M. Steinberg at 12407 Ohio Avenue, West Los Angeles, CA. 90025, and at said time and place defendant well knew said contents of said letter had been stolen.

COUNT TWO

(18 U.S.C. § 1708)

On or about August 17, 1972, in Los Angeles County, within the Central District of California, defendant HENRY OGLE WATSON unlawfully had in his possession the contents of a letter which had been stolen from the mail, addressed to Syed T. Ahmad at 1502 Wellesley Avenue, West Los Angeles, CA. 90025, and at said time and place defendant well knew said contents of said letter had been stolen.

COUNT THREE

(18 U.S.C. § 1708)

On or about August 23, 1972, in Los Angeles County, within the Central District of California, defendant HENRY OGLE WATSON unlawfully had in his possession the contents of a letter which had been stolen from the mail, addressed to Kenneth Sorenson at 12118 Ohio Avenue, West Los Angeles, CA. 90025, and at said time and place defendant well knew said contents of said letter had been stolen.

COUNT FOUR

(18 U.S.C. § 1708)

On or about May 28, 1971, in Los Angeles County, within the Central District of California, defendant HENRY OGLE WATSON unlawfully had in his possession the contents of a letter which had been stolen from the mail, addressed to Issac F. Lenix at 1003 East Kau, Compton, CA. 90221, and at said time and place defendant well knew said contents of said letter had been stolen.

A True Bill

_____ _____,

Foreman.

WILLIAM D. KELLER,
United States Attorney.

RELEVANT PORTIONS OF TRANSCRIPT OF TRIAL OF OCTOBER 25, 1972

4 The COURT. Good morning, gentlemen.

Mr. NASATIR. Good morning, Your Honor.

Mr. KENNEY. Good morning, Your Honor.

The CLERK. Case No. 11056, United States of America vs. Henry Ogle Watson.

Mr. KENNEY. Your Honor, Michael Kenney for the Government in this matter.

Mr. NASATIR. Your Honor, Michael D. Nasatir for the defendant, Mr. Watson, in this matter.

Mr. KENNEY. Your Honor, may I address the Court?

The COURT. Yes.

Mr. KENNEY. Your Honor, the Assistant United States Attorney who is handling this case is Curtis Rappe, who has been handling it. He has been delayed in a trial before Judge Williams, that was supposed to end yesterday at noon. He has requested that this case before Your Honor trail the case in Judge Williams' court. I have not had a chance to prepare for it and it wasn't until late yesterday afternoon that I was informed that there might be a conflict.

The COURT. Well, this is the date set for trial. I think we better go to trial today. It is not a very complicated case. I am sure you can handle it.

Mr. NASATIR. May I make a suggestion, Your Honor?

5 The COURT. Yes, sir.

Mr. NASATIR. Your Honor, I filed a motion to suppress in the matter. If I could suggest, Your Honor, I think there is—if we could try the motion to suppress today, possibly giving the Assistant United States Attorney the morning or however long he needs to interview his witnesses and continue the trial in this matter, Your Honor. I think there is a possibility of two things happening if the motion is denied—which I don't know if it will be or not. And I represent to the Court that there is a good possibility of either a disposition being worked out, which will take some time to iron out details or a jury waiver on the part of the defendant.

I think this will accommodate the Court and I think it will take—we might even be able to stipulate, Your Honor, if we go further than the motion, that the case be heard on the facts elicited at the motion to suppress.

The COURT. Well, that is all right. Let's get on with the motion to supress.

I will give you until 10 o'clock to look it over and talk to your witnesses. All we need are the facts and I am sure it is not very complicated. If it proves to be more complicated than that, I will take that up at the time.

Mr. KENNEY. I may not be trying the case in that respect.

I was just sent down on this matter to bring it before the

6 Court's attention. I have another trial before Judge Lucas, and I am right now appealing a decision of his on a motion to suppress that he put in yesterday.

If Your Honor wants this case tried today, I am sure he will have someone from our office to try it.

The COURT. Well, it is only going to take—it won't take more than a day, in any event, it doesn't seem to me, so if you have the day free, why don't you try it?

Mr. KENNEY. Maybe I will do that and see if we can assign the other duties to someone else.

The COURT. We will take a recess until 10 o'clock.

Mr. NASATIR. Your Honor, I am not objecting to a continuance, I realize his problems.

The COURT. No, I realize that.

Mr. NASATIR. He did call me last night and I do realize the problem.

The COURT. No, I think that we ought to go to trial on it now.

Mr. WAYLAND. Your Honor, one further matter. The Federal Public Defender's office was initially appointed in this matter and we were substituted out a little over a week ago. I just wanted the Court to——

The COURT. I did not sign the substitution, because I didn't want to get trapped in a position that would have a motion made for a continuance on that basis. But I will if

7 Mr. Nasatir is ready to go.

Mr. NASATIR. Yes, Your Honor. And, believe me, my motion for a continuance is only based upon a trial that was scheduled to go yesterday. I filed my motions. I am ready to go, except for that trial.

The COURT. All right.

Mr. NASATIR. I thought my motion was in in plenty of time. I certainly want to assure the Court that there is no hanky-panky.

The COURT. We will proceed with it now, and I will sign the substitution.

Mr. WAYLAND. Thank you very much, Your Honor.

The COURT. All right.

Mr. KENNEY. Your Honor, may I address the Court?

The COURT. Yes.

Mr. KENNEY. At 10 o'clock, do you want us to go ahead on the hearing for the motion to suppress; is that correct, Your Honor?

The COURT. Yes.

Mr. KENNEY. I might have difficulty filing some counter Points and Authorities.

The COURT. Never mind the Points and Authorities. I think the motion is simple enough on the law. If we get the facts, why, the law will fall into shape, I think.

Mr. KENNEY. Thank you, Your Honor.

8 The COURT. All right.

[Brief recess taken.]

The COURT. All right, gentlemen.

Mr. KENNEY. Your Honor, at this particular hearing, the Government would like to call Postal Inspector Frank L. Barbarick to the stand, if the Court please.

The COURT. All right, sir.

Mr. NASATIR. Your Honor, at this time we would like to ask for the exclusion of all percipient witnesses.

The COURT. The motion is granted.

Now, are there any other witnesses in the room?

Mr. KENNEY. I would ask the case agent to be allowed to be with me. If Your Honor please, I believe that is allowed, but I will exclude all other possible witnesses.

The COURT. All right.

For the record, this is a hearing on the motion to suppress.

MOTION TO SUPPRESS

Frank L. Barbarick, called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The CLERK. What is your full, true name, sir?

9 The WITNESS. Frank L. Barbarick, B-a-r-b-a-r-i-c-k.

DIRECT EXAMINATION

By Mr. KENNEY:

Q. Inspector Barbarick, could you state with whom you are employed, please?

A. Postal Inspector assigned to Los Angeles.

Q. How long have you been so employed?

A. Approximately two and a half years.

Q. Now, prior to your employment as a Postal Inspector, what was your occupation, sir?

A. Police Officer.

Q. For Los Angeles?

A. No, I was a Police Officer with the City of San Fernando, approximately 15 years, and then I went up North to Oregon as a Police Officer.

Q. How long were you a Police Officer up there?

A. Two years I was up there.

Q. Directing your attention to August the 17th of this year, did you have occasion to talk with one Awad Khoury?

A. I did.

Q. What was the occasion that you spoke with him on; how did that conversation initiate?

A. By telephone.

10 Q. Who called whom?

A. Mr. Khoury called me.

Q. Prior to this occasion, had you had any contact with Mr. Khoury?

A. Yes, a number of times he called——

Q. About how many times, Officer?

A. Over five times—between five and ten times, I would say.

Q. Were you familiar with his voice?

A. Yes, I was.

Q. When he called you, did he identify himself?

A. Yes, he said, "This is Tony."

Q. Is Tony the name that he generally used in talking with you?

A. Yes, it was.

Q. Did you, independent of the fact that he gave a name, recognize his voice?

A. Yes, I did.

Q. On this occasion, about what time was this on the 17th that he called you?

A. Early afternoon.

Q. Where were you at this time?

A. In my office.

Q. Where is your office located?

11 A. At Fifth and Spring, second floor, in the old Edison Building.

Q. When he called you, what, if anything, did he say?

A. He stated that he had a Bank of America credit card that had been turned over to him or given to him by a Henry Watson.

Q. Did——

A. No, I am sorry. He stated that he was going to receive a Bank of America card from Henry Watson, that was it, at that time.

Q. Did he tell you what the number was on that credit card?

A. No, he just gave me a name at that time.

Q. And what name was that?
A. It was—do you mind if I go through my notes?
Q. No, I have no objection if you refresh your memory from your notes.
A. Syed T. Ahmad, I believe it is pronounced, A-h-m-a-d.
Q. All right.
What did he say? Where did Mr. Khoury say he was going to get this credit card?
A. From Mr. Watson.
Q. Did he give a full name for Mr. Watson?
12 A. Henry, I said, "Do you mean Henry Watson?" and he said, "Yes."
Q. Did you know Henry Watson at this time?
A. Yes, I knew Henry Watson.
Q. What was your nature of the prior contact with Mr. Watson?
A. I had arrested Mr. Watson prior to this charge.
Q. On what charge?
A. Possession of stolen mail.
Q. And how long ago was this?
A. It is over a year.
Q. Has any other governmental or police agency arrested Mr. Watson, to the best of your knowledge?
Mr. NASATIR. Objection, hearsay, Your Honor.
The COURT. Sustained.
By the WITNESS:
A. Yes.
Mr. NASATIR. Your Honor, I move that the answer be stricken.
The WITNESS. I am sorry.
The COURT. The answer will go out.
By Mr. KENNEY:
Q. Could you repeat, again, when it was that you arrested Mr. Watson for possession of stolen mail?
13 A. It was over a year or so prior to the time that he called me or made contact. It was 1971.
Q. What, if anything, did you tell Mr. Khoury concerning the credit card in question?
A. What did I tell Mr. Khoury?
Q. Yes. Did you give him any instructions?
A. Yes.
Q. What did you tell him, sir?

A. He stated that Mr. Watson was going to turn the credit cards over to him. I told him at the time to take the credit card and immediately bring it to me at my office or contact me.
Q. Did Mr. Khoury state when he was planning on getting this credit card?
A. Later on that day.
Q. Later on that day, did you have another occasion to see Mr. Khoury or talk to Mr. Khoury?
A. I did.
Q. What was that occasion?
A. Later on towards evening after dark, he came to my office, at this time turned over the credit card to me.
Q. What time would this have been, just approximately?
A. Approximately 7:00—between 7:00 and 7:30, I believe, right around that time. It was after dark, I remember
14 that.
Q. When he turned this credit card over to you, what number was on that credit card? It was a BankAmericard credit card?
A. Yes, sir.
Q. What number was that?
A. May I refresh my memory?
Q. Yes.
A. I have a card here, the number is 4024 682 059 676, good through 08–73, in the name of Syed, S-y-e-d, T, middle initial, Ahmad, A-h-m-a-d.
Q. Is that the credit card that was given to you on the 17th of August by Mr. Khoury?
A. Yes, I have my initials and the date on the card.
Q. Your initials are on the card?
A. Yes.
Q. What, if anything, did you do to determine whether or not that credit card was in fact stolen or missing?
A. Along with Inspector Higgins, we contacted the Bank of America credit card section and it was determined at that time that the card was mailed, but never received by the customer.
The BankAmericard section told you this that that card had been mailed, but never received by the customer?
15 A. Yes, I believe it was around August 14th or somethink like that.

Q. That the credit card had been mailed on?

A. Yes.

Q. What, if anything, did Mr. Khoury tell you about when you received that credit card at this later meeting?

A. He stated that he had received the credit card from Mr. Watson, and that Mr. Watson wanted him to purchase some airline tickets, TWA airline tickets. He showed me at the time a slip of paper with some handwriting on it, that gave names and places for the airline ticket to be purchased.

Q. Did Mr. Khoury say anything about the possibility of purchasing additional credit cards?

A. Well, yes. That Mr. Watson could furnish him with additional cards, yes.

Q. Had it been agreed upon between Mr. Watson and Mr. Khoury that Mr. Watson would furnish additional credit cards?

A. Yes.

Q. What arrangements were made in that regard?

A. Well, Mr. Khoury stated that he could—Mr. Watson stated that he could obtain credit cards and turn them over to Mr. Khoury to be used in purchasing merchandise,
16 like TWA airline tickets and clothing and so on.

Q. Was Mr. Watson actually selling the credit card or was he having Mr. Khoury obtaining goods and services for it and then splitting the profits?

Mr. NASATIR. Objection, Your Honor, it assumes facts not in evidence. These are Mr. Khoury's statements admitted for probable cause only, I take it.

Mr. KENNEY. Your Honor, I am just——

The COURT. I don't understand your objection. Will you make it clearer?

Mr. NASATIR. Yes, Your Honor.

I am objecting mainly to the form of the question in that the prosecutor——

The COURT. The question was leading, but I have——

Mr. NASATIR. Well, a lot of the questions are leading, Your Honor, and I am trying to save time by not objecting. But I will object on that basis and I will also object on the basis that the question was: Did Mr. Watson say—if that were a fact. I think the question should be, what did Mr. Khoury say about something.

The COURT. I agree.

Mr. KENNEY. I will rephrase the question, Your Honor. Thank you.

17 By Mr. KENNEY.

Q. Did Mr. Khoury state to you, Inspector Barbarick, what the agreement was between Mr. Khoury and Mr. Watson?

A. On the airline tickets he was to purchase the airline tickets and he would be reimbursed for his time and efforts by Mr. Watson for purchasing them.

Q. At this later, in the evening, August 17th meeting, did Mr. Khoury tell you what arrangements had been made, in order to get additional credit cards?

A. Only that he could obtain additional credit cards from Mr. Watson.

Q. And what did you tell Mr. Khoury in this regard?

A. I told Mr. Khoury to set up a meeting with Mr. Watson.

Q. And did he set up a meeting?

A. He did.

Q. And when did he contact you concerning this meeting?

A. On the 21st. He contacted me in reference to setting up a meeting and the meeting was set up for the 22nd.

Q. This would be the 21st and 22nd of August?

A. Yes.

Q. Where was the August 22nd meeting set up for?

A. At the Ramada Inn, just off Century, close to the airport.

18 Q. Who was to attend that meeting?

A. Mr. Khoury, Mr. Watson and Postal Inspector Denise Roos was to accompany Mr. Khoury.

Q. How were they to meet out there?

A. They were to meet in the cocktail lounge.

Q. Did in fact the meeting take place on the 22nd?

A. No, it did not.

Q. And why did a meeting not take place?

A. Mr. Khoury talked to Mr. Watson——

Mr. NASATIR. Object, Your Honor, same objection.

The COURT. Yes, sustained.

Mr. NASITIR. It assumes facts not in evidence.

By Mr. KENNEY:

Q. Did Mr. Khoury tell you whether or not a meeting took place that day?

A. He stated no meeting took place. Of course, we were at the motel, ourselves.

Q. Did Mr. Khoury tell you why a meeting did not take place?

A. He stated that they had received a call from Mr. Watson, that he couldn't meet them that day, that he would meet them the next morning on the 23rd.

Q. And where was the 23rd meeting to be held?

A. The same place, the Ramada Inn.

19 Q. On the 23rd of August, what were the circumstances of the meeting and where was it to be held?

A. In the cocktail lounge.

Q. At the Ramada Inn?

A. At the Ramada Inn, yes.

Q. What time was that meeting to be held?

A. In the morning around 10 o'clock a.m.

Q. Did Mr. Khoury tell you whether or not a meeting did take place?

A. Yes, no meeting took place.

Q. And did Mr. Khoury tell you why a meeting did not take place?

A. That he had stated that he had talked to Mr. Watson and Mr. Watson wanted him to meet with him at Ship's Restaurant on South La Cienega Boulevard.

Q. On what date was this, according to Mr. Khoury, that this meeting was to take place?

A. The same day, the 23rd.

Q. The 23rd?

A. Yes.

Q. Later on in the day—strike that, please.

What time was the meeting to take place on the 23rd at Ship's Restaurant?

A. Around noontime.

20 Q. Who was to be involved in the actual meeting?

A. Just Mr. Khoury. Mr. Watson did not want the Postal Inspector at the time, Denise Roos.

Q. Mr. Khoury told you that?

A. Yes. He stated that he did not want to meet the girl at that time. He wanted to talk to Mr. Khoury and he would bring the stuff with him.

Q. Were you at the Ship's Restaurant on August 23rd?

A. I was parked on La Cienega Boulevard approximately 75 yards.

Q. Were there other officers of the Postal Service with you?

A. Yes.

Q. Who was with you?

A. Inspector Higgins, Cooper and Inspector Gillespie, who accompanied Inspector Roos inside the restaurant, Ship's Restaurant.

Q. Who were the two postal officers who were inside the actual restaurant.

A. Inspector Gillespie and Inspector Roos.

Q. Did you see Mr. Watson drive up to the restaurant in question?

A. I did not, no.

Q. Did other agents under your control and command

21 inform you that he had in fact driven up?

Mr. NASATIR. Objection, hearsay.

The COURT. Overruled.

By the WITNESS:

A. Well, if I may explain. We had a prearranged signal, that when Mr. Watson entered the restaurant and the informant found out if he had in his possession stolen mail, that he was to signal the inspectors inside the restaurant. At this time they were to alert us by activating a beeper signal that would come over our radio.

By Mr. KENNEY:

Q. How would Mr. Khoury—I presume you are referring to him as the informant—what was this prearranged signal with the postal inspectors inside of the restaurant?

A. To light a cigarette.

Q. And what was that signal to indicate?

A. That Mr. Watson was in possession of stolen mail.

Q. And was such a signal made on the day in question?

A. It was.

Q. Who was the signal made to? In other words, which of the officers under your control and command saw Mr. Khoury light a cigarette?

A. It would be Inspector Roos and Inspector Gillespie.

Q. And what were Inspectors Roos and Gillespie to do

22 based upon this?

A. Inspector Roos would activate the beeper. At that time a signal would be heard over our circuit or radio.

Q. Would all of the inspectors and special employees receive this signal?

A. That were in that immediate area, they would, yes.

Q. And what action did you take upon this signal?

A. I immediately proceeded to the restaurant.

Q. What happened when you got to the restaurant?

A. I went into the restaurant and I served Mr. Watson and placed him under arrest.

Q. And when you placed him under arrest, did you at that time tell him what he was under arrest for?

A. For possession of stolen mail. I removed him from the restaurant at that time.

Q. And where did you take him to?

A. Right directly outside the restaurant.

Q. And what was your purpose in doing that?

A. Well, it was crowded and a lot of activity—people started getting excited, so we moved him out, so it would calm things down inside the restaurant.

Q. When you got him outside, what, if anything, did you do?

A. I advised him of his constitutional rights.

23 Q. What rights are you talking about?

A. The Miranda rights.

Q. Did you read these to him off a card or did you give them to him from your own memory?

A. From my own memory.

Q. And what were those rights that you gave to the defendant?

A. That he had a right to remain silent. That anything he stated could be used against him. He had a right to an attorney before answering any questions. If he could not afford an attorney, one could be provided for him. And that if he wished to answer questions, he could stop at any time and request an attorney.

Q. After you told Mr. Watson that, what, if anything, did he say to you?

A. He said, "Frank, I understand my rights."

Q. He knew you on a first name basis, then?

A. Yes, he did.

Q. What, if anything, did you do after that?

A. I asked him, "Henry, where is your car?"

He pointed to a beige Monte Carlo Chevrolet in the parking lot. And then I stated, "Can I look inside?"

And he said, "Go ahead."

I said, "You know, if I find anything, it is going

24 to go against you."

And he said, "Go ahead, there is nothing in there."

Q. In other words, he indicated it was all right to search his car?

A. Yes, he did.

Q. Did you, in fact, search his car?

A. I did.

Q. Did you search it personally?

A. Along with Inspector Higgins.

Q. What, if anything, was found in that search?

A. Under the floormat on the driver's side, I recovered envelopes and credit cards.

Q. Do you know the names of the credit card holders that were on the card?

A. May I look at the——

Q. Yes.

A. There was an envelope that was recovered under the floormat, bearing the name of Marlene Steinberg, S-t-e-i-n-b-e-r-g. 12407 Ohio Street, West L. A., California. Another one addressed to Kenneth Sorensen of 1244 North Gower, L. A., California 90046. It bears my initials, the date of 8–23–72.

I am removing two envelopes, one bearing the name of Kenneth Sorensen, 12118 Ohio, West Los Angeles, California 90025. The return address of Post Office Box Z, Pasa-

25 dena, California 91109.

Inside the envelope is a Bank of America credit card No. 4024 688 038 351, good through 08–73, bearing the name of Kenneth Sorensen.

Q. And that was found under the driver's seat, did you testify?

A. Yes, under the floormat on the driver's seat. This bears my initials with the date of 8–23.

Q. And was anything else found in the car?

A. Yes.

Q. What was that, briefly, Officer?

A. This was another envelope containing a credit card with the name of Marlene M. Steinberg, No. 4024 682 187 691, good through 08–73. This also bears my initials and the date 8–23–72.

Q. In order to gain entry to the car in question, did you need the car keys?

A. Yes.

Q. Were they given to you?
A. Yes, by Mr. Watson.
Q. Prior to the 23rd, did you know what car the defendant Watson would be driving?
A. Yes.
Q. How did you know that? How did you have that
26 information?
A. Mr. Khoury advised us of this.
Q. What information did he give you concerning that car?
A. That this was a rental vehicle, a Monte Carlo, beige in color.
Q. Did he give you a license plate?
A. Yes, if I may refresh my memory on the license number. It would be bearing license plate numbers 161 DVW, registered to Dollar-A-Day Rental Car System on Century Boulevard in Los Angeles.
Mr. KENNEY. Your Honor, could I have one moment to confer with cocounsel?
The COURT. Certainly.
[Brief pause.]
By Mr. KENNEY:
Q. Inspector Barbarick, after the occasion in question, what, if anything, did you do with the car; was the car impounded?
A. No, it was not.
Q. Did you inform the owner where the car was or other officers under your control that day?
A. There were other officers under my control at that
27 time. I don't—I believe we left the car there, because it was still rented by Mr. Watson.
Q. Returning to——
Mr. NASATIR. Object to that, Your Honor, and ask that that statement go out as hearsay; also incompetent.
Mr. KENNEY. I have no objection, Your Honor.
The COURT. All right, it will go out.
By Mr. KENNEY:
Q. Directing your attention to Mr. Khoury, you mentioned at the beginning of your testimony that you had had dealings with him on four or five occasions. What were the nature of these deals?
A. He would relate information on different people, as far as violations of mail theft and also of Mr. Watson. He stated he

talked to Mr. Watson on two or three occasions prior to the 17th.
Q. Was the substance of the information he had given you previously reliable information; did it turn out to be reliable?
Mr. NASATIR. Objection, conclusion, Your Honor.
The COURT. Overruled.
By the WITNESS:
A. Yes, because knowingly the background of Mr. Watson, it was fairly easy to check it out.
28 By Mr. KENNEY:
Q. In other words, he had given you information previously on Mr. Watson; is that correct?
A. On people that Mr. Watson was with and different names that Mr. Watson had talked about in their conversation with people that I had investigated prior to that for mail theft.
Q. On the basis of Mr. Khoury's information, you conducted investigations; is that correct?
A. Yes.
Q. And your investigations did——
Mr. NASATIR. Objection. Leading, Your Honor. This line of questioning is crucial.
The COURT. Yes.
Mr. KENNEY. Your Honor, I am trying to save time for the Court.
The COURT. Well, I know, but I think counsel is right. This is a very important part.
By Mr. KENNEY:
Q. Concerning the information that was given you by Mr. Khoury, did you check out that information?
A. Most of it, yes.
Q. Yes, and what did you find out concerning this information?
29 A. Well, it helped on information of knowing the whereabouts and people or suspects that were involved in mail theft throughout the Los Angeles area.
Q. Had Mr. Khoury ever given you false information?
Mr. NASATIR. Objection, Your Honor, conclusion.
The COURT. Overruled.
Mr. NASATIR. Then I will object to the basis of the question, Your Honor.
The COURT. Overruled.
By Mr. KENNEY:

Q. Could you repeat your answer?

A. Not that I know of.

Q. Are you familiar with Mr. Watson's reputation among law-enforcement agencies?

Mr. NASATIR. Objection, Your Honor, irrelevant.

The COURT. Sustained.

I think you can ask him now in this context, what information he may have received from other agencies concerning Mr. Watson.

Mr. KENNEY. Thank you, Your Honor.

The COURT. Excuse me, I misspoke myself. I didn't mean concerning Mr. Watson, but concerning Mr. Khoury's information or information from other agencies concerning Mr. Khoury's reliability.

30 By Mr. KENNEY:

Q. To your knowledge, Inspector Barbarick, has Mr. Khoury ever furnished information to local law-enforcement agencies?

Mr. NASATIR. Objection, Your Honor, incompetent; hearsay, also.

The COURT. Overruled.

By the WITNESS:

A. It is unknown.

By Mr. KENNEY:

Q. It is unknown to you.

Have you ever been contacted by local law-enforcement agencies—I hope I am not getting into an area that you don't want me to, Your Honor—have you ever been contacted by local law-enforcement agencies concerning Mr. Watson?

Mr. NASATIR. Same objection, Your Honor, hearsay.

The COURT. Sustained.

Mr. KENNEY. Excuse me, Your Honor.

[Brief pause.]

Your Honor, the problem I am having here, cocounsel has brought to my attention, is the fact that relying upon the Harris v. United States case, they talk about the known reputation of the individual concerned, the defendant in that case, as being an element that can go towards—at least

31 as I remember the case—probable cause or the sufficiency of the affidavit. This is what I am trying to bring out from Inspector Barbarick, the fact that to show proof here that

the defendant is widely known in law-enforcement circles as being an individual in trafficking stolen mail.

My understanding and recollection of the Harris case is, that the Court said in that case that this was a legitimate avenue of inquiry. Certainly not at the trial, but at any motion to suppress or pretrial motion.

The COURT. Well, as I understand it, the thrust of the motion is that, one, that there was no consent to search the car; and two, that the informant was not reliable. You have covered that. There is no foundation for the questions that you are now asking.

Now, the record doesn't show whether he was arrested as the result of a warrant or not.

Mr. KENNEY. You mean, in the case before us, Your Honor?

The COURT. Yes. Whether Mr. Watson was. If he was arrested because he was caught in the act with stolen mail more or less, why, then, a warrant may be unnecessary.

But if either the car was searched pursuant to a warrant or if he was arrested pursuant to a warrant, why, then, of course, what support there was for the issuance of warrant

32 would be material. But we don't have that in the record at the moment.

Mr. KENNEY. Thank you, Your Honor.

By Mr. KENNEY:

Q. Inspector Barbarick, when you arrested the defendant Watson on August 23 at the Ship's Restaurant, did you have a warrant for his arrest?

A. No, I did not.

Q. What information did you rely upon in arresting him?

A. On the card that was turned over to me by the informant.

Q. And the informant told you he got the card from where?

A. He had received it from Mr. Watson.

Q. And you had checked and found out that that card has in fact not been misdelivered or been sent and not received?

A. Yes.

Q. You recognize the individual who you arrested in the courtroom today?

A. Yes.

Q. Where is he seated here?

A. He is sitting at defense table.

Q. Would you describe him.

33 A. A brown sport jacket and brown shirt.

The COURT. All right, he has identified the defendant.

Mr. KENNEY. May the record so reflect, Your Honor?

The COURT. Yes.

Mr. KENNEY. No further questions, Your Honor, thank you.

The COURT. All right.

You may cross-examine.

CROSS-EXAMINATION

By Mr. NASATIR:

Q. Mr. Barbarick, you stated that the information you relied upon in arresting Mr. Watson was the fact that he had given the credit card to the informant; right?

A. Mr. Watson had, yes.

Q. Now, the fact that he, Mr. Watson, had given the credit card to the informant was based on what the informant told you; is that correct?

A. That is true.

Q. This informant, Mr. Khoury, had he been arrested by your service prior to August 17, 1972?

A. Not by our service, no.

Q. Had he been arrested by any law-enforcement
34 agency, to your knowledge?

A. My understanding is that he had a State violation.

Q. And that State violation was forgery, was it not, sir?

A. I believe it was.

Q. That State violation had to do with credit cards, did it not?

A. I am not sure on that, whether it was credit cards or checks.

Q. It is possible that it had to do with credit cards; is that correct?

A. I don't know.

Mr. KENNEY. Your Honor, I would object. It calls for speculation by the witness. He has already answered, and he says he doesn't know.

By Mr. NASATIR:

Q. Was it your information that the arrest of Mr. Khoury by local law-enforcement involved stolen mail?

A. I believe it did.

Q. Is that how you got involved in the case with local law-enforcement?

A. No, I didn't get involved in the case at that time.

Q. Do you know the disposition of the arrest of Mr. Khoury on the State side?

35 A. I believe—this is from what Mr. Khoury told me, of course.

Mr. KENNEY. Your Honor, I object. It seems to me it is irrelevant; plus he is asking for speculation. The witness apparently doesn't have first-hand knowledge.

The COURT. Overruled.

By the WITNESS:

A. Mr. Khoury stated that he had spent some time, a short amount of time in jail and I believe he was placed on probation for this period.

By Mr. NASATIR:

Q. Out of this case that involved stolen mail, your service did not arrest Mr. Khoury; is that right?

A. No, we didn't arrest him for that violation.

Q. Did your service have Mr. Khoury under investigation for any current violations of possession of stolen mail?

A. He was investigated for that violation, if that is what you mean, by our service.

Q. For the prior violation; is that correct?

A. Yes, on the State charges.

Q. And your service never charged him, am I right?

A. We have a policy here—the U.S. Attorney has a policy. If there are two related charges involved, State charges, it would be repetitious on our part to charge him with
36 another offense.

Q. Was Mr. Khoury being compensated by your service for the information he had given you?

A. You mean in reference to Mr. Watson's arrest?

Q. Yes.

A. Yes.

Q. What form of compensation did he receive, sir?

A. Expenses he incurred.

Q. And how much expenses did he receive prior to August 17, 1972?

A. I would have to get my books out on that. It was gas money and parking fees at that time.

Q. The informant contacted you on four or five occasions prior to August 17, 1972, in order to give you information; is that correct?

A. Yes. I forget exactly how many times it was, but he made contact with me.

Q. Can you tell me between or what monthly period these conversations took place?

Let me try and make it easier for you: When did he become an informant for your service, sir?

A. Well, my first contact with Mr. Khoury was—I am trying to think back, it was back around February or March of this year. The first actual contact that I had with him.

37 Q. Of 1972?

A. Yes.

Q. Is that when he began receiving expenses?

A. No, not at that time.

Q. Now, was that a personal contact or a telephonic contact?

A. No, it was a personal contact.

Q. Now, would it be fair to say that on the four or five occasions that Mr. Khoury gave you information, that it was related to Mr. Watson in Mr. Watson's activities?

A. Most of it was, yes.

Q. All right.

Was there any that was not?

A. Only that—the associates of Mr. Watson.

Q. So everything that Mr. Khoury told you during 1972 on those four or five occasions that he talked to you when he was giving you information, concerned Mr. Watson and Mr. Watson's associates; is that correct?

A. Yes.

Mr. NASATIR. May I have one moment, Your Honor?

The COURT. Yes.

[Brief pause.]

By Mr. NASATIR:

Q. Now, prior to August the 23rd, 1972, Mr. Watson,

38 of course, was not arrested or convicted as far as you know, was he, sir? From February 1972 to August 1972, Mr. Watson was not arrested or convicted on the basis of any information that Mr. Khoury supplied, was he, sir?

A. No.

Q. Did Mr. Khoury ever testify in court relative to any of the information that he supplied you?

A. No.

Q. Did Mr. Khoury ever testify under oath or fill out an affiadavit relative to any of the information he supplied you?

A. No.

Q. After August the 17th, 1972, was Mr. Khoury surveilled in any way concerning his meeting with Mr. Watson other than the meeting at Ship's?

A. Would you repeat that question, please.

Q. Well, have you related everything—all of the investigation up until the arrest of Mr. Watson that your agency did concerning this incident?

A. I believe I have, yes.

Q. There was no handwriting analysis made of the written information prior to—that Mr. Khoury gave you, prior to August 23rd, was there?

A. I don't understand your question now.

39 Q. You said that Mr. Khoury showed you a list of airports and airport tickets that he was supposed to carry out for Mr. Watson, allegedly. There was no handwriting analysis made of that, was there, sir?

A. Not at that time, no.

The COURT. Was there silence?

The WITNESS. We sent all of our stuff to the crime lab, Your Honor, that was involved in this case.

By Mr. NASATIR:

Q. When was that sent to the crime lab, that list?

A. It was either on the 24th or shortly thereafter, by Inspector Higgins.

Q. It was after the arrest; is that correct?

A. Yes.

Q. And prior to August the 23rd, 1972, you had an exemplar of Mr. Watson's handwriting, did you not?

A. I believe we have them on file, yes, in our office.

Q. You also had an exemplar of Mr. Watson's fingerprints, did you not?

A. Yes, I think we do, right.

Q. Now, concerning the meeting at Ship's Restaurant, Mr. Barbarick, if you know, where were Agents Roo——

A. Roos.

Q. Roos and Gillespie seated in the restaurant?

40 A. They were approximately 10 to 12 feet from the table that Mr. Watson and a young lady, he was with, also Mr. Khoury.

Q. Were they at the counter or another table?

A. At another table.

Q. How many tables away from Mr. Watson's table were they seated?

A. Well, it was sort of an aisle between them there, that was about it. One table, I guess, they could have put between there, if they wanted to.

Q. They could have put one table between them?

A. Yes, that's right, I think so.

Q. And it was crowded in there at around 11 o'clock a.m.?

A. Yes, it was crowded.

Q. What day of the week did this take place, sir?

A. I will have to refresh my memory on that.

Q. Well, it was a weekday, was it not?

A. Yes.

Q. And it was at 11 o'clock a.m. in the morning?

A. No, it was just around noontime or shortly thereafter.

Q. So it was lunch time in there; is that correct?

A. Yes.

Q. And I believe you testified that it was crowded?

A. It was crowded, yes.

41 Q. Now, you received—other than the beep on your beeper—you received no communication prior to the arrest of Mr. Watson from Mr. Gillespie or Miss Roos, did you?

A. No.

Q. None of the alleged telephone conversations between your informant, Mr. Khoury and Mr. Watson prior to the 23rd, were listened to or surveilled, were they, sir?

A. I don't quite understand the question. Would you repeat it, please?

Q. Did any of your agents listen to any of the alleged conversations between Mr. Khoury and Mr. Watson prior to the 23rd?

A. On the telephone?

Q. Yes, sir.

A. No.

Q. Any other listening to the conversations between Mr. Khoury and Mr. Watson?

A. No.

Q. Had Mr. Khoury been promised any immunity or reward in connection with his work in helping to get cases for you?

A. Only his expenses.

Q. And can you tell us any approximation—I believe I asked this, but I forgot the answer—can you tell us what approximation of his expenses he received prior to August 23rd.

42 A. Well, it is difficult without my records here, but it was for gas and parking fees; it could range from five to ten dollars at one time. It could go up as high as $20. It depends on whether he had something to eat or drink while being with Mr. Watson.

Q. Prior to August 23rd, 1972, was Mr. Khoury ever observed by your agents with Mr. Watson?

A. Prior to the 23rd?

Q. Yes, sir.

A. Only at the restaurant the same day.

Q. On the 23rd?

A. Right.

Q. Now, between August 17th and August 23rd, 1972, did you ever attempt to go to the Magistrate to get a warrant of arrest for Mr. Watson?

A. I contacted——

Mr. KENNEY: Your Honor, I object. It seems to me that is irrelevant here. I don't see how that has any bearing on the case here. He already testified he didn't have a warrant.

The COURT. Yes, sustained.

By Mr. NASATIR:

Q. You were in the Los Angeles area between August 17th and August 23rd, were you not, sir?

43 A. Yes, I was.

Q. Now, you stated that the information that Mr. Khoury supplied to you concerning Mr. Watson on the four or five occasions helped as to knowing the whereabouts of Mr. Watson?

A. Well, yes, plus other information.

Q. All right.

And that information helped you in other investigations, is that correct, or just an intelligence view?

A. It eventually resulted in the arrest after the 23rd. I will say this: That it helped bring about arrests.

Q. Prior to the 23rd, there had been no other arrest based upon this information, had there?

A. No.

Q. And certainly there had been no convictions based upon any information Mr. Khoury had supplied to you; is that correct?

A. No.

The COURT. I don't think that is very material. I mean, the fact that there had been neither arrests or convictions, unless we know what the information was concerning what person.

Mr. NASATIR. Any person, Your Honor.

The COURT. Well, I know. In other words, information
44 which is received from an informant may be concerning innocent acts of various people, whose whereabouts and activity is thought by the police or agents or inspectors to be material to an investigation.

By Mr. NASATIR:

Q. Let me ask you this then, Mr. Barbarick.

Can you tell us what the first piece of information Mr. Khoury gave you was, on the first of these five occasions?

A. Well, the first time that I met Mr. Khoury, the information that he related to me, if I may go back that far, was regarding Mr. Watson.

Q. What was that, sir?

A. Well, first of all, I asked him if he wanted to help the Postal Inspectors on mail violations and mail thefts. I asked him who did he know and he said, "I know a subject by the name of Henry Watson."

He said, "Do you know him?"

I says, "Yes."

I stated what were your connections with Mr. Watson and he said, well, Mr. Watson had given him material checks and identification to go into a bank to make a bank transaction, deposit less cash. He was arrested by the police and convicted of that crime.

Q. That was prior to this, though; is that correct?

45 A. That was my first meeting—the first contact of the information that I have related he gave me.

Q. I see, Mr. Khoury was arrested?

A. Mr. Khoury was arrested on stuff that was given to him, he claimed, by Mr. Watson.

Q. Did you do anything to check out this claim? Did you run fingerprints of the checks in the State court?

A. I didn't have the stuff, it was in the court file at the time.

Q. Did you ask for an order to release that information?

A. No, I did not.

Q. What investigation, if any, did you do to corroborate that information?

A. check it with the Postal Inspector that investigated the case.

Q. Was any arrest of Mr. Watson made concerning that information?

A. No, not at that time.

Q. What was the next piece of information that Mr. Khoury gave you—well, let me ask you:

Has Mr. Watson ever been arrested on that charge?

A. On the charge of Mr. Khoury's, not that I know of.

Q. And what was the next piece of information he supplied to you?

46 A. It is difficult to go back on the dates. He was talking about people that had associated with Mr. Watson, such as, Mr. Brown, a girl by the name of, I believe, Carr, Linda Carr; people that he had met at different places with Mr. Watson. We knew that——

Q. Well, let me ask you this, Mr. Barbarick:

Was he ever surveilled by your agents in the company of any of these people?

A. No, he wasn't.

Q. What else, sir?

A. Well, each time, up until the time he called me on the 17th, there was information about people that we had under investigation or had arrested prior to this time for mail thefts.

Q. And no surveillance or independent corroboration was made of you of that information that Mr. Khoury had given to you; is that correct?

A. Other than checking out the information.

Q. Other than checking out the fact that these might have been associates of Mr. Watson?

A. Checking the associates out, yes. We checked that out.

Q. You checked the associates?

We checked to see that they were still involved in
47 what we call, "Mail theft violations."

Q. But as far as Mr. Watson—none of the information that Mr. Khoury gave you at that time led to any arrests or convictions; is that it?

A. Not at that time, no.

Q. Now, Mr. Barbarick, directing your attention to Ship's Restaurant at the hour of 11 o'clock p.m. on August 23rd, after Mr. Watson's arrest. You testified as to what you advised Mr. Watson. Is that the sum and substance, as well as you can remember, as to what rights you advised Mr. Watson of?

A. Yes.

Q. All right.

After you advised him of his Miranda rights, as you call them, did you ask him if he was willng to make a statement to you?

A. Not at that time, no.

Q. At that time the only question—the first question you asked him was whether he understood his rights; is that correct?

A. Yes.

Q. After you asked him that question, did you say anything else to him; what next did you say?

A. Well, after he stated, "Yeah, Frank, I know my
48 rights," and I asked him where his car was at, and he pointed to it.

Q. What then did he say?

A. Then I asked him if I could look in the car and he stated, "Go ahead."

I stated, "You know, if I find anything, it is going to go against you."

And he said, "Go ahead, there is nothing in there."

Q. Is that the sum and substance of your conversation with Mr. Watson prior to searching the vehicle?

A. That was about it at that time.

Mr. NASATIR. I have no further questions, Your Honor.

The COURT. All right, sir. Anything else?

Mr. KENNEY. I have a few more questions, Your Honor.

REDIRECT EXAMINATION

By Mr. KENNEY:

Q. Could you repeat, again, Inspector Barbarick, what was the charge that you arrested Mr. Watson for on this previous occasion?

A. Possession of stolen mail.

Q. Do you know the disposition in that case?

49 A. The disposition?

Q. Yes, what was the outcome of that case?

A. This is the one with the cards we have here.

Q. I don't mean on the August 23rd——

A. I am sorry.

Q. You said you arrested him on a previous occasion.

A. Inspector Higgins and I arrested him prior to this arrest.

The COURT. For what?

The WITNESS. For possession of stolen mail, Your Honor.

By Mr. KENNEY:

Q. Do you know what the outcome of that was, the court outcome; did the charges ever go to court?

A. No, they did not.

Q. Do you know why they did not?

A. Yes.

Q. Why is that?

Mr. NASATIR. Objection, Your Honor, irrelevant.

The COURT. Overruled.

By the WITNESS:

A. Mr. Watson had furnished our service with information that resulted in the arrest of a major violator in mail
50 theft.

By Mr. KENNEY:

Q. So what happened with the charges?

A. The charges were dropped at that time.

Q. You testified on cross-examination that the service had exemplars of Mr. Watson's handwriting; is that correct?

A. I believe we do.

Q. On what occasion did the service receive those?

A. I believe at the time that Inspector Higgins and myself arrested Mr. Watson.

Q. This would be on the previous arrest?
A. Yes.
Q. What was done, if anything, with those exemplars?
A. They were placed into the packet at that time.
Q. Were they compared with any known violations, whether they be checks or credit cards?
Mr. NASATIR. Objection, Your Honor, irrelevant.
The COURT. Sustained.
Mr. NASATIR. Also hearsay, Your Honor, and incompetent.
Mr. KENNEY. Your Honor, I am trying to establish exactly what the officer's knowledge of the defendant Watson was; and I am trying to establish this by the fact that he had taken handwriting exemplars from him in the past and that perhaps had been highly incriminating.
51 Now, for one reason or another, perhaps charges were never brought. But I think this goes once again towards showing what the reputation of the defendant was, in order to establish the probable cause to arrest him on this particular occasion.
Now, obviously, that can't carry the case alone. But I feel that, combined with what I claim is the reliability of the informant, would be relevant to this court.
Mr. NASATIR. May I be heard, Your Honor?
The COURT. Yes.
Mr. NASATIR. Your Honor, it has already been established that this investigator had arrested this man in 1971 on postal violation charges, and those charges were dismissed. That fact, having been admitted, I think all other facts are irrelevant. Plus the fact that any other fact would be complete hearsay.
The COURT. Well, I don't know that they are irrelevant. I think it is more likely to be cumulative. I mean, they are already familiar with him as a violator for this type of offense, which would add to their knowledge and give them further reason to think that in all probability the information they were getting from the informant is correct; and that is the point.
Mr. KENNEY. Your Honor, I will withdraw the ques-
52 tion if you feel it is cumulative.
The COURT. All right.

Mr. KENNEY. I just have one or two more questions, if the Court please.
By Mr. KENNEY:
Q. When Mr. Khoury was giving you information concerning Mr. Watson, you testified that he gave you information concerning Mr. Watson's acquaintances and his friends; is that correct?
A. Yes.
Q. Was this information specific enough so as to clearly identify that Mr. Khoury did know Mr. Watson?
A. Yes, sir, it was.
Mr. NASATIR. Leading and suggestive, and I would ask that it go out and be stricken, Your Honor.
The COURT. Yes, the objection is sustained.
Mr. KENNEY. I will withdraw the question. I have no further questions, Your Honor.
The COURT. All right.
You may step down. Thank you very much.
Do you have another witness?
Mr. KENNEY. No, Your Honor.
The COURT. Do you have any witnesses?
Mr. NASATIR. No, Your Honor.
53 The COURT. Well, I think that there are two questions: One with respect to whether or not the defendant consented to the search of the car after the arrest; and after that, there is uncontradicted evidence that he did after receiving his Miranda rights. And as far as the information which would lend credence to Mr. Khoury's report, which would result in their arrest, seems to me to be reliable.
Mr. NASATIR. May I be heard, Your Honor?
The COURT. Yes, but if you want my thoughts, I was going to let you address me after you hear me.
Mr. NASATIR. I am sorry, Your Honor.
The COURT. It gives you more advantage, it seems to me than if I would go the other way around.
Mr. NASATIR. Yes, you are absolutely right, Your Honor. Thank you.
The COURT. It seems to me that Khoury is a person, who, according to this testimony, was known to them. There is no requirement that, in order to establish that a person is a reliable informant, that he produce evidence which results in some-

body else's conviction. The only thing that is required is that he's a person who is, at that time, at least, reporting reliably the information which the agents want.

A man may, prior to that time, have in his own defense perhaps not be truthful in some other action. But if, as the
54 information is received, it is checked out, people are where he says they are and this is material then it lends credence to it. And most particularly when they have checked out a credit card, which according to the agent, was given to him by Mr. Khoury. And by checking out, I mean, they inquired of the bank that issued the credit card, and the bank advised that the credit card had been mailed and it had not been received.

Now, that is information which I think makes a reliable informant. I will hear from you.

Mr. NASATIR. Thank you, Your Honor.

If Your Honor please, and with all due respect, I think the Court has overlooked the central reason or the central objective of reliable information; and that objective is a certain situation that the objects to be sought are on the premises right then at the time that the informant says they are. And in an arrest situation by analogy, it is that his person is the one who did the act that the informant said he did.

Now, the informant here has given information only as to who Mr. Watson associates with, which was never surveilled or no meetings between these people were ever surveilled by postal inspectors. There could have been reputation and rumor in the community about who his associates were. I could
55 indicate who Mr. Watson's associates are and call the Postal Inspectors with that information if I wanted to.

It was the informant who had been arrested for possession of stolen mail himself six months earlier. It was an informant whose information had led neither to an arrest nor a conviction. It was an informant whose information was, as far as it had been corroborated, and it had never been corroborated independently by the Postal Inspectors, but all of his prior information had never been corroborated.

Now, you also have a situation, Your Honor, where there is no emergency here. There is five days between the time that the informant brought this credit card to the agents and the time that Mr. Watson was arrested. Five days, Your Honor. The

only other fact, which these investigators relied upon in this case, in order to arrest Mr. Watson, was a meeting about which we know nothing of the contents; only that the informant, again, uncorroborated, except for what could have been a totally innocent meeting. And the fact that he knew Mr. Watson is undisputed. There is no question about it. But other than the fact that they met, they already had every piece of information they relied upon. There was nothing to prevent them in this situation from going to a Magistrate and getting a warrant.

They did not go to a Magistrate and get a warrant. So his independent judgment was not interposed in this case.

56 My point is, Your Honor, that if it had been interposed in this case, even after the meeting—the meeting I think Your Honor will agree adds nothing to what the postal inspectors had.

The COURT. I don't agree with that.

They met in the Ship's Restaurant. At that point, the stolen credit card exchanged hands or at least another credit card that, in all probability, was stolen in view of the information which they had, and was given, and then they received a signal that this transaction had taken place so they made an arrest.

Mr. NASATIR. That is not correct, Your Honor, excuse me. No credit card exchanged hands at the restaurant. All it was, was a meeting. The informant was to give a prearranged signal if he determined that Mr. Watson had the credit card. No credit cards exchanged.

The COURT. Well, all right.

Mr. NASATIR. Those credit cards were not——

The COURT. That is all right, I stand corrected on that. I agree with that.

But at least he had in his possession cards that didn't belong to him.

Mr. NASATIR. All right.

The COURT. And so they arrested him at that point.

57 Mr. NASATIR. Your Honor, my point is, first of all, what we have here under Aguilar, is clearly an unreliable informant. He is unreliable for the following reason—and it is the People's burden, Your Honor, of course, to prove his reliability. He is unreliable for the following reasons:

Number one, he is a convicted criminal, convicted of the same crime for which he's giving information. Number two, he is receiving compensation from the Postal Inspectors for supplying information. Number three, he is testifying or giving information, Your Honor, that is not corroborated in any significant way. His only information which could be the subject of casual reports or rumor in the community, which could be the subject of general knowledge concerning Mr. Watson. And these facts are, Your Honor—this is what the Postal Inspector knew that the informant provided.

These facts are: One, that Mr. Watson is a violator. Well, they knew that. Two, that Mr. Watson has certain friends. Fine, that is innocent. The fact that he has certain friends is innocent. The fact that Mr. Watson had a certain car with a certain license plate is innocent. Anyone who knows Mr. Watson could find that out and anyone who knows could have rented a car.

But you also have the added fact in this case, Your Honor, that two of the proposed meetings with Mr. Watson fell through. They did not show up, nobody showed up. The
58 informant's information in that a meeting would take place, information sufficient, Your Honor, to have agents surveilling the area on two occasions, did not happen.

Now, all you have is the informant's word that a meeting would take place. The informant's word that Mr. Watson gave him the credit card. The informant's word that Mr. Watson had other credit cards at the time. And the informant, Your Honor, from all the information, cannot be reliable. This is the kind of situation that the Supreme Court is talking about in Aguilar, Your Honor.

The Court. I don't agree with you. I don't think that that is what it shows.

As I pointed out before, the information may be of certain innocent acts, but when they are considered in light of other information that they have, it shows that the informant knows what he is talking about and that it is reliable information.

Now, that's the key to it. There is no requirement that some arrest result from the information which they gave them, and this is a surreptitious business.

Now, whether or not he did or didn't have stolen credit cards in his possession, speaking now of the defendant, is something

that he can contest before a jury. And if he wants that, today is then day of trial so we can try that out. But as far as the justification for arresting him at this time, it seems to me
59 that they had good reason.

The offense isn't the sale of a credit card. The offense is having in possession material which has been stolen from the mail.

Mr. Nasatir. Your Honor, I just wanted to add one further fact, if I might be heard.

Here we have the added factor that the police had ample opportunity to corroborate the informant, if they wanted to. He submitted a list of certain time and places, supposedly told to him by Mr. Watson. No fingerprint analysis or handwriting analysis was made of this list, although it certainly could have been done in the five days—there was no emergency—in the five days between then and now. And none of these telephone conversations were surveilled, in order to check the informant's information concerning its reliability, although that opportunity was there. It is a normal law-enforcement technique. It is done all the time in the federal courts, as I am such Your Honor knows, with one party consenting, which could have been the informant. No conversation, no corroboration of the informant whatsoever, only the words of an informant who had been arrested and convicted for the same offense six months prior to this. Absolutely no corrobation and no reliability.

Then, Your Honor, the cases I have cited in my supplemental Points and Authorities, point to the fact that the fact
60 that a man has a reputation or has been arrested prior to this for a similar offense, does not supply the corroboration that the informant needs. The fact that the informant knows some innocent information about a person, does not supply the corroboration. The informant must have been previously tested and found to have been previously reliable by reliable methods.

The fact that he said that Mr. Watson had certain associates and that checked out, but Mr. Watson was at certain places and that checked out, is totally innocent information, which I or anyone sitting in this courtroom could have provided in the same incident with only knowledge of Mr. Watson's reputation and association.

The COURT. Well, all of that may be true; other people may have had this information, too. If you, for instance, had that information knowing about it, that might be true, too. But you didn't also have the information that he had in his possession stolen credit cards or stolen material from the mail. That is the crucial difference.

There may be things that other people know or some that they don't know, but it doesn't have to be some kind of crucial information.

I don't agree with you on that, and I think the motion should be denied.

Mr. NASATIR. Your Honor, as to the consent search, it
61 is also the People's burden to prove a knowing and intelligent waiver of the constitutional rights concerning the search of his vehicle. This defendant was never even asked whether he would waive his rights and was never informed of his rights not to have that vehicle searched.

Under Ninth Circuit cases, Your Honor, which I can give you a few——

The COURT. Well, never mind the citations. I think I am pretty familiar with that.

Mr. NASATIR. I believe that the Ninth Circuit requires, Your Honor, that the defendant be at least informed of his rights not to submit to a search of his person or his property; and also, Your Honor, that it requires a clear and unequivocal waiver, neither of this he had in this case.

The COURT. I think there is. The motion is denied.

If you want to recess until 1:30, I will give it to you.

Mr. NASATIR. Your Honor, in this trial, there will also be a question concerning a defendant's supposed statement that he made a *Jackson* v. *Denno* hearing.

To save this Court's time, I think we could have that hearing now.

The COURT. Let's do it right now.

Mr. KENNEY. Your Honor, may I check the file on the
62 statement? I just got the file this morning.

The COURT. It may be you don't intend to use it, so there is no use in wasting our time.

Mr. KENNEY. No, I will call it to the Court's attention, if I don't.

The COURT. We will take a brief recess, so that you can look into this.

Mr. KENNEY. Thank you, Your Honor.

Your Honor, I realize this is highly irregular, but I thank you.

The COURT. That is all right.

[Brief recess was taken.]

The COURT. All right, gentlemen.

Mr. KENNEY. Your Honor, the Government will call as its first witness, Frank L. Barbarick, an inspector in the post office.

The COURT. All right, sir.

Frank L. Barbarick, having been previously duly sworn, resumed the stand, was examined and testified further as follows:

The CLERK. You will recall, sir, that you have heretofore been sworn to tell the truth?

The WITNESS. Yes.

Mr. KENNEY. Your Honor, if I may address the Court.
63 Some of the matters I am going to be going through are going to be repetitive with the testimony this morning, but I will go through them in order to get that information on the record.

The COURT. Well, it is in the record and I don't think you have to do that. We will take into consideration the testimony that has already been given and just supplement it as much as necessary.

Mr. KENNEY. Okay, Your Honor.

DIRECT EXAMINATION

By Mr. KENNEY:

Q. Inspector Barbarick, you previously testified that you advised the defendant of his Miranda rights and you stated those rights for the record.

A. Yes, sir.

Q. After he was arrested and after the search of the vehicle, was he transported anywhere?

A. Yes, sir, to our office.

Q. Now, how was he transported?

A. Via vehicle. Our inspectors' unit, ready unit.

Q. Were you present in that unit?

A. Yes, I was.

Q. Did any conversation ensue between yourself and
64 the defendant?

A. Yes.

Q. Could you relate to the Court what the nature of that conversation was?

A. Well, there was what I would call small talk between Mr. Watson and myself.

Q. In substance, what was the nature of the conversation; by small talk, what do you mean?

A. Well, for example, what have you been doing, how have you been, what have you been doing; this type of thing.

Q. Was there any other conversation with the defendant?

A. Yes. A comment was made that, "Frank, you know, I would like to help you out on this if I can."

Q. Who made that comment?

A. Mr. Watson.

Q. Did this statement have any significance to you?

A. Yes, it did.

Q. What significance was that?

A. Mr. Watson has helped us in the past on cases relating to mail theft.

Q. Has he ever been arrested by you, and then has he ever helped you?

A. Yes. He has been arrested and he has helped us.

Q. Is this the significance of that statement to you?
65 A. Yes.

Q. Once he was taken to headquarters, what happened then?

A. He was taken to my office and there we had another conversation.

Q. Well, would he have been fingerprinted and photographed in the interim, in the in between period, to your knowledge?

A. I don't know if he had been fingerprinted prior to that conversation or shortly thereafter. It was about an hour and a half after he had been arrested that we had that conversation in my office.

Q. And this converstion took place in your office?

A. Yes, it did.

Q. Prior to talking with him in the office, did you say anything to him concerning his rights?

A. If he still understood that he was—you know, had a right to remain silent, that he had a constitutional right to remain silent and he said, "Yeah, he understood them."

Q. And did he indicate a willingness to speak to you?

A. Yes.

Q. Did he indicate in any way that he did not want to speak with you?

A. No.

66 Q. Did you make any promises, in order to have him speak with you?

A. The only thing I stated to Mr. Watson at that time was that anything that he stated or anything that he helped us with in the case, in the pending case, would be brought to the attention of the U.S. Attorney.

Q. And what, if anything, did he tell you?

A. He stated that he had received the credit cards from a subject by the name of John. And that John had received these credit cards from a postal employee.

Q. Did he give any description of where this John could be located?

A. Yes. It was an apartment complex at 800 North Mariposa, out in Hollywood.

He described John as a male Negro, 25 years of age, five feet ten inches, 160 pounds, black hair cut short, brown eyes.

Q. By these credit cards, what cards was the defendant referring to?

A. The cards that had been found in the vehicle.

Q. Was he also referring to the one that you had previously gotten from Mr. Khoury?

A. Yes.

Q. Did you follow up on the information which the
67 defendant gave you?

A. Yes, we did.

Q. And what resulted in that follow-up investigation?

Mr. NASATIR. Objection, irrelevant, Your Honor.

Mr. KENNEY. Your Honor, I am merely trying to show that the information was reliable and someone was arrested. And I think this would go a long way, as to showing the fact that he freely and voluntarily consented.

Mr. NASATIR. I think this has nothing to do with his free and voluntary consent or as far as his waiver of rights.

The COURT. The objection is overruled.

By the WITNESS:

A. There was an arrest made, yes.

By Mr. KENNEY:

Q. Was there a conviction in that case?

A. It is still pending. The court trial is still pending on that.

Q. Is it in the federal or State court?

A. Federal court.

Q. Getting back to the nature of your conversation with him, did you promise him anything at all, the defendant?

A. No, other than what I——

Q. Could you repeat that again for the record, please.

68 A. That anything he helped us with or stated would be related and turned over to the U.S. Attorney at a later date.

Q. And you have previously testified that when he was arrested on a previous date, some year before, a similar occurrence happened; is that correct?

A. Yes.

Q. And had any promises been made him on that occasion?

A. No, just that the U.S. Attorney would be made aware of what he helped us with and told us.

Mr. KENNEY. Okay. Fine.

No further questions. Thank you.

The COURT. You may cross-examine.

CROSS-EXAMINATION

By Mr. NASATIR:

Q. Mr. Barbarick, the defendant was arrested approximately 12 o'clock noon, did you say?

A. Shortly thereafter. It was around noon time.

Q. And after his arrest, his automobile was searched; is that correct?

A. Yes.

Q. And after his automobile was searched, you rode downtown and in the car he said something to the effect, "Frank, I would like to help you in this case"; is that right?

69 A. I believe—yes, that is just about the extent of it.

Q. You have known this defendant for about a year and a half, have you not?

A. Maybe a little longer.

Q. You have worked with him on prior occasions concerning other cases; is that correct?

A. He has helped us in prior occasions, yes.

Q. How many times have you talked to this defendant on prior occasions relative to his giving information to helping you as an informant?

A. It is hard to say. On one case alone, I believe we talked quite a few times, until the subject was arrested and convicted.

Q. He has given you information then on cases where subjects have been arrested and convicted; is that right?

A. Yes.

Q. How many convictions did you obtain on information given to you by Mr. Watson?

A. Well, prior—and then after his arrest this time, there was another arrest made from this last arrest.

Q. How many times prior to his arrest?

A. Now, to me personally, one time.

70 Q. Do you know of any other convictions obtained on the basis of Mr. Watson's——

A. I believe there were two.

Q. So three convictions in all were obtained on the basis of information that Mr. Watson has given to you or your service in the past; is that right?

A. Yes.

The COURT. Well, I am not sure—two convictions and one case pending? Three.

The WITNESS. Your Honor, no, there is a case pending on this last information he gave us.

The COURT. So there were three convictions previously——

The WITNESS. Prior to ——

The COURT [continuing]. And one pending?

The WITNESS. Right.

By Mr. NASATIR:

Q. Is that right, sir?

A. That's right.

Q. Now, where did you go immediately after searching Mr. Watson's vehicle?

A. We went to my office.
Q. Where is your office?
A. At Fifth and Grand.
Q. In downtown Los Angeles?
71 A. Yes.
Q. What time did you arrive at your office?
A. It was about an hour and a half or so after.
Q. After the arrest?
A. Yes.
Q. What was done in the meantime, what took——
A. Well, by the time we—I should say there was the arrest and then the search, and then by the time we got in the car and drove downtown—approximately an hour and a half.
Q. When you got to your office?
A. Yes.
Q. At any time that day, did you proceed to the United States Attorney's office to get a Complaint?
A. I didn't personally, no.
Q. Did others from your agency?
A. I believe Inspector Higgins did.
Q. Was Mr. Watson brought before the Magistrate on that day?
A. I will have to check my notes on that, if you don't mind.
Q. Could you?
A. Yes.
[Witness reveiwing notes.]
72 Before Magistrate Ralph Geffen.
Q. What time, sir?
A. It is unknown at what time. Inspector Higgins took him over.
Q. Inspector Higgins took him over after you took him to your office; is that right?
A. Yes.
Q. Was anything else done at your office other than talk to Mr. Watson?
A. Well, printed, and I believe he was—I don't remember whether a handwriting was taken at that time or not. I believe he was printed and mugged—or photographed.
Q. At your office?
A. In the building, yes.

Q. And he wasn't printed and mugged at the Marshal's office downstairs?
A. He could have been, again, I don't know.
Q. Is it your practice when you arrest them to take them to the Marshal's office to print them and mug?
A. No, it is our practice to do it in our office.
Q. All right.
Did you interview Mr. Watson at the time he was being fingerprinted or photographed?
Let me put it this way: You didn't have anything
73 to do with the fingerprinting or photographing, did you?
A. No, I didn't.
Q. Your purpose in taking Mr.Watson to your office was to interview him; is that correct?
A. Yes, talk to him.
Q. Isn't it a fact, sir, that prior to Mr. Watson being taken to your office, he had declined to make any statement that would incriminate him?
A. If I may refresh my memory on my notes, Your Honor?
The COURT. Yes.
[Brief pause.]
By the WITNESS:
A. According to—in refreshing my memory, the defendant declined to make any statement which would incriminate him, other than to say the source of the procurement of the credit cards stolen from the mail was a person by the name of John. And I testified that this individual——
By Mr. NASATIR:
Q. When did Mr. Watson decline to make any statement that would incriminate him?
A. At the time of his arrest, I think.
Q. Right at the time of his arrest?
A. Well, it was at the time of his arrest, subsequent
74 to his arrest.
Q. Was that at the La Cienega Ship's Restaurant?
A. I believe he commented at that time about—just a second, let me go back here. I have to go back here.
At the restaurant—no, it was at the office that he made this statement regarding John, that he didn't want to incriminate himself personally. But he would, tell us where he got the stuff from.

Q. Now, at Ship's Restaurant, could he have made that statement that he declined to make any statement?

A. I don't believe so, because at Ship's Restaurant our conversation was fairly brief, about the advisement of his rights, plus the fact of what was in his car—if he had anything in his car and giving me permission to go to the car.

Q. Isn't it a fact that at Ship's Restaurant the defendant stated to you that he did not want to incriminate himself and that he did not want to make any statements?

A. No, because the comment was made in a car that he wanted to help me.

Q. And did you tell him that any statement that he told you would help him; did you indicate that to him?

A. My statement to him was that anything he stated or helped us with, would be brought to the attention of the
75 U.S. Attorney.

Q. Was that your only statement in response to his statement?

A. Rather what we could do for him, you mean?

Q. Yes, sir.

A. That was all.

Q. And as to what would happen to him?

A. No, other than it would be brought to the attention of the U.S. Attorney.

I advised him, I said, "Henry, you know, I can't promise you anything."

And he says, "Yeah, I know. We have gone through this before."

Q. Where did this advisement take place?

A. I believe in the office when he started to tell us about John.

Q. You sat him down in your office to interview him, did you not?

A. He just sat in the office, yes.

Q. And you brought him to your office, did you not?

A. Yes.

Q. And he wasn't fingerprinted or photographed; is that right?

A. I don't recall if he was fingerprinted prior to that
76 time or after that time.

Q. At the time of the statement he was not being fingerprinted?

A. No.

Q. He was sitting in your office for the purpose of an interview?

A. Yes, he came in there because he wanted to talk to me.

Q. What was the first thing you said to him and what took place in your office; can you relate the exact conversation as well as you can?

A. I again told him, you know, about his constitutional rights. "That you don't have to tell me anything, Henry."

Q. Is that the way you told him about his constitutional rights?

A. Well, he had already been advised of his constitutional rights prior to that time. I said, "I advised you out in the street of your constitutional rights and it would be the same thing that I would advise you in the office."

He said, "I know my constitutional rights, Frank. You don't have to go through it again."

Q. You told him that anything he said would be made available to the United States Attorney, although there were no promises?

77 A. That was all. That anything he helped or stated or gave us would be made available to the U.S. Attorney.

Q. That is when he stated that he would not want to make any statement that would incriminate him?

A. Him personally, but he would help us with the people involved on how he obtained the credit cards.

Q. Was it your feeling that—strike that.

Is that the way he put it, "I don't want to make any statements that would incriminate me, but I will help you as to——"

A. How he got the cards.

Q. Did he say how he got the cards or who had the cards or who gave them to him?

A. How he came about having the cards.

Q. Are you sure he stated those words?

A. Well, he said, "How I got the cards."

Q. Did he mention Mr. Khoury at all?

A. Oh, yes.

Q. As to how he got the cards?

A. No, other than he said, "I know I should have watched out for that guy," you know.

Q. Now, after he was brought to our office and after he was interviewed, he was taken to the United States Magistrate; is that right?

78 A. By Inspector Higgins, yes.

Q. How far from your office is the United States Magistrate's office?

A. Oh, less than five miles, about three or four miles. I haven't actually clocked it.

Q. Would you say it is a five-minute drive away?

A. Depending on traffic, of course, it could be a half an hour drive away if you were in heavy traffic.

Q. And this was at what time that Mr. Watson was in your office?

A. Well, like I say, it was approximately an hour and a half or so after his arrest, which would bring it probably around to 2 o'clock or so. So after the interview, it could be—I don't exactly remember the time that he left to go to the Magistrate, but it could have been 3:30, something like that. Around—I don't know exactly what time it was he left for the Magistrate's. It was in the afternoon, I know that.

Mr. NASATIR. Your Honor, I have no further questions concerning Mr. Barbarick as to this issue.

May I ask about three questions on the motion to suppress issue, Your Honor?

The COURT. Yes.

Mr. NASATIR. Thank you very much, Your Honor.

79 By Mr. NASATIR:

Q. Mr. Barbarick, have you had a chance to go over your notes concerning the information supplied to you by your informant?

A. My report here that Mr. Higgins made out, he and I together. I related it to him and he placed it in typewritten copies.

Q. All right.

I am talking about your informant, Mr. Khoury. Do you remember when we were talking about information that he provided you on those four or five occasions?

A. Did I go over the notes this morning?

Q. Yes.

A. No. I remember the names he had given to me prior to this time.

Q. Now, I believe I asked you about the first information that Mr. Khoury gave to you concerning Mr. Watson.

A. That was back when he made contact with him, relating Mr. Watson with his connection.

Q. What did you do to check out that information?

A. I called Inspector Boyd N. Manis about Mr. Khoury. And he said, yes, he related the case as far as they were concerned and why they didn't file on it, because of it being repetitious.

Q. And the second time he gave you information, what was that information?

A. That is very difficult to—he gave names at different times and things that were happening, relating to Mr. Watson and his associates. So I couldn't say whether it was Mr. Brown one time or Miss Carr the next time or people associated with him and so on, because there were a number of names given at the time.

Mr. KENNEY. Your Honor, excuse me. I realize that you have allowed defense counsel to go into this area, but I fail to see the relevancy of this line of questioning and proceedings before the Court and it is very time consuming.

The COURT. Let's let him finish. He is going to be very short.

Mr. NASATIR. I will be two minutes and I think it is crucial.

By Mr. NASATIR:

Q. Mr. Barbarick, do you have a written record of your conversation with Mr. Khoury prior to August 17, 1972?

A. I could have some notes in my file, yes. I could have dates of when possibly—I didn't look at them, I don't remember. A lot of the notes that I have we would go over them. There could be some in there.

Q. Do you have your notes with you now?

81 A. No, I don't.

Q. Could you review those over the noon time and answer some questions from them this afternoon?

A. Yes, of course.

Q. Without referring to your notes, could you tell me what steps were taken to corroborate any information given to you prior to August 17, 1972, by Mr. Khoury, other than what you have already told us?

A. What I have told you, is knowing the people he talked about, the acquaintances, associates, knowing his background; everything that related to mail theft.

Mr. Watson had been associated with people, a number of people, and it goes into the hundreds probably that are involved with mail theft.

Mr. KENNEY. Your Honor, may I interrupt defense counsel.

It seems to me he is trying to relitigate the motion that we have gone into this morning.

The COURT. Yes, that is exactly right.

Mr. KENNEY. I don't think Inspector Barbarick has to bring in his notes this afternoon.

The COURT. No, we haven't gotten to that.

Mr. KENNEY. The question has already been decided.

Mr. NASATIR. If Your Honor please, I do admit that I had thought that my record was completely complete. I was surprised frankly by Your Honor's ruling.

I am trying to get the record complete by just reopening as to these few questions, so that the record may be complete for later purposes. And I would appreciate the opportunity to do so, Your Honor. I am being very brief. This is all I am going to ask.

The COURT. Go ahead. I haven't stopped you.

By Mr. NASATIR:

Q. Were there any steps taken by you other than your own knowledge of Mr. Watson's associates of the information given to you concerning Mr. Watson by Mr. Khoury prior to August 17th?

A. With the associates, you are talking about?

Q. Any steps——

A. Yes. There is a subject by the name of Brown, I think you are familiar with the name William Brown——

Q. Yes, sir.

A. That has been under investigation for quite some time through information received by Mr. Khoury and also Mr. Watson since his arrest, that we are attempting to arrest now for mail theft.

Q. Yes, sir.

I am talking about steps taken prior to August 23rd by your service?

A. Well, this was information on mail recovered out of different trucks and collection boxes, that we, with the information given to us by Mr. Khoury and Mr. Watson, helped us to determine that Mr. Brown is a suspect on these cases.

Q. Can you tell me what specific information, if any, given to you by Mr. Khoury was independently corroborated by you other than launching an investigation as to a certain subject?

A. Well, I would have to go back to the times when the collection boxes were broken into and trucks were broken into.

The COURT. Let me ask a question along this line:

You got information from Mr. Khoury as to these trucks or boxes. And that information checked with the information you had already as to the particular boxes and particular trucks?

The WITNESS. Yes. A few of them—that information Mr. Khoury had received from Mr. Watson brought about information that helped us determine that the suspect we were investigating was a Mr. Brown.

The COURT. But, so that the information you had independently, from what you got from Mr. Khoury, checked out with the information you received from Mr. Khoury; is that correct?

The WITNESS. Some of it, yes.

The COURT. All right.

Counsel now asks: Did you make an independent investigation as a result of information you got from Mr. Khoury to check out the facts that he had given to you?

The WITNESS. Yes. We checked with witnesses. But we also talked to the supervisors, people that observed the collection boxes and also the carriers that were involved in the theft of mail, as far as having their mail stolen.

The COURT. And did that information jibe with the information you received from Mr. Khoury?

The WITNESS. Information that a subject, Caucasian, certain height, long hair, was involved or had been seen in the area when the theft took place.

By Mr. NASATIR:

Q. But that subject was not positively identified prior to August 23rd, was he?

A. No. Mr. Watson gave further information to help us identify him.

Q. After Mr. Watson's arrest?
A. Yes.

Q. So the information that jibed with Mr. Khoury's
85 information, coming from Mr. Watson, came after Mr. Watson was arrested; is that right?

A. No, information—if I may explain.

Mr. Khoury gave us information that he claimed he received from Mr. Watson. Mr. Watson gave us information later that tied in with the information from Mr. Khoury.

Q. And the later time that you are talking about, that Mr. Watson gave you this information, happened after Mr. Watson was arrested, on August 23rd, 1972?

A. No, no, no.

The COURT. Well, now, what he says is this: That prior to the arrest of Mr. Watson, Mr. Khoury gave him certain information. And that that information jibed with knowledge that they already had, which would tend to corroborate. And in addition to that, they interviewed witnesses and talked to supervisors and so forth, which again corroborated the information which they got from Mr. Khoury.

After the arrest, then our present defendant contributed some additional information, which further corroborated it.

Mr. NASATIR. All right, that is what I wanted.

By Mr. NASATIR:

Q. What I am talking about is not what Mr. Watson gave you after the arrest. All right, do you understand that?

86 The COURT. Just ask a question. If there is any doubt we will rule on them then.

Mr. NASATIR. Excuse me.

The COURT. Go ahead.

By Mr. NASATIR:

Q. Mr. Barbarick, I am referring to—for clarification—information received from Mr. Khoury prior to August 23rd, 1972.

A. As I stated——

Q. Do you understand that?

The COURT. That is not a question. Now, ask a question. He understands that.

By Mr. NASATIR:

Q. Concerning information received by you, prior to August 23rd, 1972 on Mr. Brown, you received no information

from Mr. Watson concerning Mr. Brown between February 1972 and August 23rd, 1972, did you?

A. Yes, I did.

Q. Directly from Mr. Watson?

A. Yes.

Q. I see. Was Mr. Watson working as an informant for you during this time?

A. He wasn't working for me as an informant, no. But I had had a conversation with Mr. Watson.

Q. Now, what information was it that Mr. Watson
87 checked—how did you corroborate Mr. Khoury's information prior to August 23rd?

A. As I stated, just a normal investigation of the thefts. So witnesses or people that had been somebody in the area, that looked like the subject that we were interested in.

Q. Were there any positive identification of the subject you were interested in?

A. No, I don't think so. They couldn't make it at that time.

Q. Was there any pictures—and this is the subject that Mr. Khoury had told you was involved in the theft; is that right?

A. That he had heard was involved in the theft, that's right.

Q. All right.

And Mr. Khoury told you that he had heard that this subject was involved?

A. From Mr. Watson.

Q. Now, no positive identification was made, independently by witnesses, of Mr. Brown prior to August 23, 1972; is that right?

A. No positive identification.

Q. And Mr. Brown was not arrested for any crime
88 upon which Mr. Khoury gave you information prior to August 23rd, 1972?

A. No.

Q. Mr. Brown's fingerprints did not come up on any mail prior to August 23, 1972——

A. No.

Q. Concerning that which Mr. Khoury had indicated; is that correct?

A. No.

Q. Mr. Brown's handwriting had not come up in connection with any stolen mail, as far as Mr. Khoury had indicated to you, prior to August 23rd, 1972?

A. No.

Q. Was a warrant of arrest obtained for Mr. Brown prior to August 23 of 1972?

A. No.

Mr. NASATIR. Nothing further, Your Honor.

The COURT. All right.

REDIRECT EXAMINATION

By Mr. KENNEY:

Q. Officer, you stated you have been a police officer for 10 or 15 years; is that correct?

A. Close to 20 years.

89 Q. Closer to 20.

Just as a rough estimate, how many arrests have you made during that time? I know that is going to be very difficult, but I would imagine it would be in the hundreds; would that be correct?

Mr. NASATIR. Object on relevancy grounds, Your Honor.

Mr. KENNEY. Your Honor, I think I will be able to show the relevancy.

The COURT. All right, go ahead.

By the WITNESS:

A. I worked narcotics for approximately 13 years with informants and I made—it is in the thousands, I would say, more than the hundreds.

By Mr. KENNEY:

Q. Relying upon your experience as a police officer and the number of arrests that you have made, would you say that it is common experience when a man is arrested to try and make a deal, in order to get out of any wrong-doing that he might have done?

Mr. NASATIR. Objection, conclusion, irrelevant, remote, incompetent, Your Honor.

The COURT. Well, the evidence shows in this case that Mr. Watson did on two occasions and it is not unheard of in

90 the court. And since the Supreme Court said I don't have to rule in a vacuum, I think I recognize that that happens.

Mr. NASATIR. Well, Your Honor——

Mr. KENNEY. Your Honor, one of the reasons for my question is——

The COURT. The objection is sustained. I don't see any point in going into that.

Mr. KENNEY. All right. No further questions.

Thank you, Your Honor.

The COURT. All right.

My ruling is the same. I find, for the record, in the first motion: That the informant, Mr. Khoury, was a reliable informant. That he had, prior to the time of the arrest of Mr. Watson, communicated with the Post Office Inspectors and had given them information concerning mail thefts, which checked out with information, which they already had and that the Inspectors thereafter, and prior to the arrest of Mr. Watson, interviewed witnesses and inspectors and people who were observing the postal boxes and trucks, and found from those interviews that the information which they had received from Mr. Khoury was correct.

As a consequence of this confirmation of the information which received from Mr. Khoury, he reasonably concluded that Mr. Khoury was a reliable informant. And,

91 my ruling is the same as it was before.

Now, I don't quite get the purport of the second motion. Is it only the information that you want to suppress, I take it? The witness' statement that Mr. Watson said that he would like to help them; is that it? What is it that you are aiming at?

Mr. NASATIR. Your Honor, all statements purportedly made by Watson, post arrest.

The COURT. What is it, specifically, that you are trying to suppress? If he didn't make any statements, there is no point in my making any ruling at all. If he made any statements that are incriminating, I think you should specify exactly what they are, so I know what I am ruling on.

Mr. NASATIR. Your Honor, I would specify the statement as any statement in the car whatsoever concerning small talk or,

"I would like to help you," and especially the statement——

The COURT. That is denied, because I think that is just part of what happened on the way. It is part of the total picture.

All right.

Now, what is next?

Mr. NASATIR. And I would also move to suppress the statement made, Your Honor, Mr. Barbarick's office
92 concerning he got the credit cards from John.

The COURT. On what ground?

Mr. NASATIR. On the first ground, Your Honor, that there is no clear and unequivocal waiver of his constitutional rights in this case, either at the scene of the arrest or in the office.

Number two, Your Honor, that the evidence as to this no clear, unequivocal waiver, is that this man said, "I don't want to make any statement that would incriminate me."

At that moment, at least, the interrogation should have ceased and the conversation should have stopped and the man should have been given a lawyer. Because it is a man indicating that he really does not know what is incriminating and what is not incriminating.

The COURT. I don't think that the witness said that. You said it, but I don't think he affirmed that those words were said.

Can the reporter correct us on that or find that portion?

[Whereupon, the reporter is reviewing her notes.]

Mr. KENNEY. Your Honor, I believe Inspector Barbarick read from his report.

The COURT. She cannot do both at the same time.

Mr. KENNEY. I guess it would be inappropriate to
93 be off the record at this point.

The COURT. Yes, it would be.

[Whereupon, the reporter is reviewing her notes and subsequently reads back the record as follows:

"Q. Isn't it a fact, sir, that prior to Mr. Watson being taken to your office, he had declined to make any statement that would incriminate him?

"A. If I may refresh my memory on my notes, Your Honor?

"The COURT. Yes.

"By the WITNESS:

"A. According to—refreshing my memory, the defendant declined to make any statement which would incriminate him,

other than to say the source of his procurement of his credit cards, stolen from the mail, was a person by the name of John."]

The COURT. Well, excuse me, I think I have that accurately in my notes. And he said that he didn't make any incriminating statement before he got to the office. But at the office he said where he got the cards. That is the sum and total of it.

But this other question was by Mr. Nasatir, that I
94 think you ought to look for.

The REPORTER. What was the question, Your Honor?

The COURT. Mr. Nasatir asked the witness whether or not it wasn't true that the defendant had said he didn't want to make any—when he was arrested he said he didn't want to make any statements which would be incriminating.

Mr. KENNEY. Your Honor, may I address the Court off the record for a moment?

The COURT. No.

[Record read.]

The COURT. All right, I think that is all of it.

Mr. NASATIR. Your Honor, just for clarification, if I might be heard?

If it is the state of the record that this man did not say that he declined to make any statement that would incriminate him, I think we ought to clarify it, because I think it is obvious that he did make such a statement.

The COURT. I don't think it is obvious at all. He is right here and he can take the stand and testify under oath, if he wants to. And that certainly doesn't show that he did make it. Those words came from your mouth and not the witness'.

Mr. NASATIR. No, Your Honor, I asked him, "Isn't it a fact—" and he referred to his notes and he confirmed it.

The COURT. I don't think he confirmed it.

95 Mr. NASATIR. May I ask him a question at his seat, Your Honor?

The COURT. Sure.

CONTINUED CROSS-EXAMINATION

By Mr. NASATIR:

Q. Mr. Barbarick, isn't it a fact that the defendant declined to make any statement——

The COURT. Now, that is an entirely different question, now, you realize that, but go ahead.

Mr. NASATIR. I said it is my mistake, Your Honor, then, I didn't mean it to be.

The COURT. Go ahead.

By Mr. NASATIR:

Q. At some point after his arrest, did the defendant say to you that he did not want to make any statement that would incriminate him?

A. That is, other than the source of his procurement of the credit cards.

Q. Is the answer to my specific question about whether the defendant stated those words; is that——

A. That is an answer, a complete answer.

The COURT. All right, I think he has fairly answered it.

He said other than to tell about where he got the cards.

96 By Mr. NASATIR:

Q. Could you tell us exactly what the defendant said in that regard?

A. According to my notes, "Subsequent to his arrest, the defendant declined to make any statement that would incriminate him, other than to say the source of his procurement of credit cards from mail bags, as a person named John." Then he indicated a physical description of him.

The COURT. In effect he told him that and he said he wasn't going to tell him anything else.

Mr. NASATIR. Well, Your Honor, I think we are arguing the effect, now that that is in the record—if we are arguing the effect of that—I think what he is saying is: I am not going to make any statement that is going to incriminate me. And then he says, but I will give you some information concerning where I got the cards, thinking it wouldn't incriminate him. I think once he makes the statement that I don't want to incriminate myself, that any statement after that must be ruled that he did not give a clear and unequivocal waiver. It shows he was not waiving his rights not to make a statement.

Mr. KENNEY. Your Honor, may I be heard on that issue?

The COURT. Yes.

97 Mr. KENNEY. It seems to me, you have to take this entire questioning in the context, and that is in the context that on the prior occasion he had been arrested, he bargained his way out of it. He wanted to cooperate. He wanted to give all the information he could. In the car itself, he indicates, "Hey, Frank, I want to help you guys out on this." But when he is up in the office, and his rights are still in effect, he says, "Sure, I don't want to incriminate myself as to how, you know, I got the cards here with me today, but I got them from this guy."

Certainly, he didn't want to incriminate himself completely, but enough to state that I got them from a particular individual. He kind of bargained his way out of the situation.

I think the officer clearly testified that he would call it to our attention. That no bargain was in effect and that charges wouldn't be brought.

The COURT. Well, Mr. Watson is familiar enough with the proceedings and I think he knew exactly what he was doing and had full advice as to his rights and that he didn't put an end to the conversation and went ahead and made that statement. That is my point of view.

Now, what are we going to do? It is 20 minutes to 1:00.

98 Mr. KENNEY. Your Honor, defense counsel has indicated that there might be some stipulations; namely, he has indicated to me at the recess that he initially would be willing to stipulate to the fact that the credit cards in question, the three credit cards, were in fact mailed and that they were not received.

Is this a correct statement of your position?

Mr. NASATIR. That is correct, Your Honor.

The COURT. Well, should I call a jury, now that is the thing?

Mr. NASATIR. Well, Your Honor——

The COURT. We are going to adjourn until 2 o'clock at this time.

Mr. NASATIR. What I would like to do, with the Court's permission, is to possibly discuss some alternative course of action with the Assistant United States Attorney.

The COURT. All right, you can do that.

We will reconvene at 2 o'clock and you should be completed with all that at that time.

Mr. NASATIR. That will give us enough time.

The COURT. And I will see if we can have a jury waiting in the wings for us. I am sure we can.

Mr. NASATIR. Thank you, Your Honor.

[Court adjourned at 12:40 p.m. to reconvene at 2 o'clock p.m. of the same day.]

99–129 * * * * *

130 call Mr. Barbarick.

The COURT. Very well. We will call you later.

Mr. KENNEY. The Government would call as its first witness Mr. Frank L. Barbarick.

Frank L. Barbarick, called as a witness by and on behalf of the Government, having been sworn, was examined and testified as follows:

The CLERK. Will you state your full, true name, please.

The WITNESS. Frank L. Barbarick, B-a-r-b-a-r-i-c-k.

DIRECT EXAMINATION

By Mr. KENNEY:

Q. Mr. Barbarick, could you state your occupation, please?

A. Postal Inspector assigned to Los Angeles.

Q. How long have you been so employed?

A. Approximately two and a half years.

Q. What was your occupation before you went with the Postal Service?

Mr. NASATIR. Objection, irrelevant, Your Honor.

The COURT. Overruled.

By the WITNESS:

A. Police Officer, Detective Investigator.

131 By Mr. KENNEY:

Q. With what municipality or what city?

The COURT. Well, I think that is immaterial.

Mr. KENNEY. Okay, Your Honor.

By Mr. KENNEY:

Q. Directing your attention to the middle of August of this year, and specifically to August 17th of this year, did you have occasion to be contacted by one Mr. Khoury?

A. I did.

Q. And who initiated that conversation?

A. Well, Mr. Khoury called me.

Q. And what did Mr. Khoury tell you when he called?

A. He stated that he had information on a credit card. This information was given to him by a Henry Watson.

Q. Had you had a prior contact with Mr. Khoury?

A. Yes, I did.

Q. Concerning other matters?

A. Yes.

Q. And what was the nature of those other matters that he contacted you on?

Mr. NASATIR. Object, Your Honor.

The COURT. Sustained.

By Mr. KENNEY:

Q. Directing your attention once again to August

132 17th. Did Mr. Khoury, when he called you, give you a name or number of a credit card?

A. He did.

Q. What name or number did he give you?

A. Syed Ahmad, that is the name. The number—if I may refresh my memory here?

Q. Did he give you the number on this occasion also?

A. No, just the name at that time.

Q. All right.

And what, if anything, did you tell Mr. Khoury?

A. He stated or I told him to try to obtain the card from Mr. Watson and bring it to my office immediately thereafter.

Q. Did he bring it to your office?

A. He did.

Q. When he brought it to your office, did you obtain a number off that card?

A. I did.

Q. And what number did you so obtain?

A. This was 4024 682 059 676.

Mr. KENNEY. Your Honor, may I approach the Clerk and give him what purports to be Exhibit 1 and have it marked for identification?

The COURT. All right, 1 for identification.

133 The CLERK. It is marked, Your Honor.

[Government's Exhibit 1 was marked for identification.]

Mr. KENNEY. Could it be shown to the witness?

The COURT. Yes, sir.

[Exhibit placed before the witness.]

By Mr. KENNEY:

Q. Do you recognize Government Exhibit No. 1?

A. I do.

Q. And what is it, please?

A. It is a Bank of America card in the name of Syed T. Ahmad. No. 4024 682 059 676, good through 08–73, with my initials dated 8–17–72.

Q. Do you recognize that credit card?

A. I do.

Q. And where do you recognize it from?

A. By my initials and the number.

Q. And when did you first see this credit card?

A. On the 17th.

Q. And who gave you that credit card?

A. Mr. Khoury did.

Q. And where did he say he got that credit card from?

A. From Mr. Watson, Henry Watson.

Q. And what efforts did you take to determine whether
134 his credit card was in fact stolen?

A. Bank of America credit card——

Mr. NASATIR. Excuse me, Your Honor. Objection, hearsay.

Mr. KENNEY. Your Honor, I am not necessarily offering this for the proof of the matter stated, but merely that he made these efforts and what he did receive and how he acted upon it at a later time.

The COURT. The objection is sustained.

By Mr. KENNEY:

Q. Did you, subsequent to this, learn that in effect that credit card had been stolen?

Mr. NASATIR. Same objection, Your Honor, and ask that the prosecutor be admonished.

The COURT. Well, the objection is sustained.

By Mr. KENNEY:

Q. What, if anything, did you tell Mr. Khoury concerning this credit card or additional credit cards?

A. I advised Mr. Khoury that this card was never received by the postal customer, when mailed out by the Bank of America Credit Card Section.

Q. What did you tell him, in addition to that, if anything?

A. That if he received any more credit cards from
135 Mr. Watson, that I would like to be notified, and where the credit cards are going to be turned over to him.

Q. Did you ask him to make any efforts in this regard?

A. Yes.

Q. What efforts did you ask him to make?

A. To try to obtain more credit cards from Mr. Watson.

Q. At a later time, did Mr. Khoury recontact you?

A. Yes. I believe it was on the 21st of August. Khoury called me and stated that he contacted Mr. Watson and that Mr. Watson had some more credit cards for him.

Q. And what, if anything, did you do?

A. At this time I set up—I told him to set up a meeting with Mr. Watson on the 22nd at a motel located in the City of Los Angeles.

Q. And what motel was this?

A. This was the Ramada Inn, it is off of Century Boulevard, close to the airport.

Q. Was there a time set up for this meeting?

A. Well, in the morning, it was set up for the 22nd.

Q. And who was to be involved in this meeting?

A. Mr. Khoury, Postal Inspector Denise Roos, along with our surveillance teams.

Q. Were you out there on that particular day?

A. I was in—yes, I was heading under surveillance,
136 had them under surveillance.

Q. For the purposes of the record and for the jury, who did you have under surveillance?

A. Denise Roos, Postal Inspector, and the informant, Mr. Khoury.

Q. And who were they waiting for?

A. They were waiting for——

Mr. NASATIR. Objection, hearsay, Your Honor.

The COURT. Sustained.

By Mr. KENNEY:

Q. Was Postal Inspector Roos acting under your direction?

A. She was.

Q. And who did you tell her to wait for?

A. I told her to wait for a Mr. Watson, Henry Watson, that was due at the motel sometime on the 22nd.

Q. On the day in question, did Mr. Watson show up?
A. He did not.
Q. What efforts, if any, did you take after this date in this regard as per the credit cards?
A. Another meeting was set up for the 23rd, the following day——
Mr. NASATIR. Object to another meeting set up, Your Honor. I think the proper answer would be he was told
137 another meeting was set up.
The COURT. Yes. The objection is sustained.
Ask another question.
By Mr. KENNEY:
Q. Did you tell Mr. Khoury to arrange another meeting with the defendant?
A. For the next day.
Q. And where was that meeting to be held?
A. At the Ramada Inn.
Q. What time was that meeting to be held?
A. In the morning.
Q. And who was to be at that meeting?
A. Inspector Roos and Mr. Khoury.
Q. And where was the meeting to take place at the Ramada Inn?
A. At the cocktail lounge.
Q. What was the time of day, again?
A. It was in the a.m., around 10 o'clock, I believe, 10:00 a.m.
Q. In effect, did a meeting take place?
A. No, not at that time.
Q. What instructions, if any, did you give Mr. Khoury then?
A. That if he was contacted by Mr. Watson, to try to—you know—ascertain where he was going to meet him or if
138 was coming.
Q. At a later time, did Mr. Khoury contact you concerning being contacted?
A. Yes, he did.
Q. What did he say?
A. He stated that Mr. Watson wanted to meet with him, but not at the Ramada Inn.
Mr. NASATIR. Object to that as hearsay, Your Honor.
The COURT. Sustained.

By Mr. KENNEY:
Q. At a later time, was another meeting arranged?
A. Yes, it was.
Q. Where was that meeting to be held?
A. The Ship's Restaurant on South La Cienega Boulevard, in Los Angeles.
Q. And what date was this to be for?
A. The 23rd.
Q. At any particular time?
A. Around 12 o'clock noon or shortly thereafter.
Q. Who were to be the participants at this meeting?
A. Just Mr. Khoury.
Q. Did you have agents or officers of your service also there?
A. Yes, I did.
139 Q. Who did you have, and perhaps you could tell us briefly where they were located?
A. At the Ship's Restaurant, Inspector Roos and Inspector Gillespie were inside, sitting at a table, approximately 10 feet or less from Mr. Khoury and Mr. Watson. On the south side, Inspector Higgins, Inspector Cooper were on Olympic Boulevard, I believe, it would be west of La Cienega. Myself and Investigator Brant were situated in a vehicle, radio unit, south of Olympic on La Cienega, on the west side of the street.
Q. Would you characterize your activities as being a physical surveillance then of the Ship's Restaurant?
A. Yes. We were able to see the front and also the other inspector to see the side.
Q. Were you the officer in charge of that surveillance?
A. I was.
Q. And what orders did you give relative to the handling of that surveillance?
Mr. NASATIR. Objection, hearsay, it is irrelevant.
Mr. KENNEY. Your Honor, it is not hearsay what orders he gave.
Mr. NASATIR. Not a court statement, Your Honor, made——
The COURT. The objection is sustained.
140 Mr. KENNEY. If I am getting into the same area of questioning, I would appreciate it if the Court would call it to my attention, Your Honor. I feel this is a very important area for the Government's case.

The COURT. I think it is immaterial what orders he gave. What happened is the important thing.

By Mr. KENNEY:

Q. Pursuant to your orders, what happened at the Ship's Restaurant?

Mr. NASATIR. Objection, Your Honor, incompetent.

The COURT. Well, it assumes a fact not in evidence.

Mr. NASATIR. And also that ground, Your Honor.

The COURT. Rephrase the question.

What happened? Can you tell us what happened?

The WITNESS. We were waiting——

Mr. NASATIR. May I take the witness on voir dire, Your Honor?

The COURT. No, not at the moment. I don't see any cause for that.

Just tell us what you did and what you observed. That is all we are asking for, not anything you didn't you yourself personally observe at the time.

The WITNESS. I observed the front door of the restaurant, Ship's Restaurant. I arrested—or went to the restau-
141 rant and arrested Mr. Watson on a signal, beeper signal, that I heard over my radio.

By Mr. KENNEY:

Q. Do you know who gave that beeper signal?

Mr. NASATIR. Objection, incompetent, Your Honor.

The COURT. Overruled.

If you know.

By the WITNESS:

A. Yes, Inspector Roos activated the beeper, which we heard over our radio unit, which alerted us to the informant and the suspect.

By Mr. KENNEY:

Q. What was that signal to alert you to?

A. That Mr. Watson had in his possession stolen mail——

Mr. NASATIR. Objection, Your Honor.

The COURT. Sustained.

Mr. NASATIR. That is a conclusion of the witness and shown to be false at a prior hearing and ask that the witness be admonished not to——

The COURT. No, just a minute. Don't make statements of that kind.

Ladies and gentlemen, you will disregard Mr. Nasatir's statement at this time.

The objection that Mr. Nasatir made, however, will
142 be sustained and you will disregard both the question and answer.

By Mr. KENNEY:

Q. After you arrested Mr. Watson in this case, what, if anything, did you do then?

A. He was removed from the restaurant.

Q. By yourself?

A. Myself and Inspector Higgins.

Q. And what was the reason for that removal?

A. The place was quite crowded and we were feeling some excitement inside of the restaurant, so we felt it best to go outside.

Q. What time did this arrest take place?

A. Around noon, or shortly thereafter.

Q. And what, if anything, happened after you got the defendant outside the restaurant?

A. I advised him of his constitutional rights at that time.

Q. Specifically what rights did you advise him of?

A. That he had a right to remain silent. That anything he stated could be used against him. He had a right to an attorney. If he could not afford an attorney, one could be provided for him. That if he wished to talk with us, he could stop at any time and request an attorney.

143 Q. Did the defendant indicate to you that he wanted to talk to you?

A. Oh, yes.

Q. And how did he indicate that?

A. He said, "Frank, I know my constitutional rights."

Q. He called you by your first name?

A. Yes, he did.

Q. And what, if anything, did you say?

A. I asked him where his car was at and he pointed to the vehicle. I asked him if we could search the vehicle and he said, "Go ahead."

I told him, "You know, if we find anything in there, it could go against you."

And he said, "I know that. There is nothing in the car."

Q. How far were you from the car at this time?

A. Well, the front door—it was a drive-through and then the parking section, so it was approximately one car length at the most, maybe two.

Q. What kind of a car was it?

A. It was a Montclaire, Chevrolet, beige in color.

Q. Did you need the keys to get into the car?

A. Yes, Mr. Watson gave me the keys.

Q. Did you personally search the car?

144 A. I did.

Q. What, if anything, did you find?

A. I recovered from the—under the floormat, some part of the vehicle, driver's side, an envelope containing two credit cards.

Mr. KENNEY. Your Honor, may this be marked for identification as Government's Exhibit No. 2, and be shown to the witness, please?

The COURT. Exhibit 2 marked for identification.

[Government's Exhibit 2 was marked for identification.]

The CLERK. It is marked No. 2, Your Honor.

The COURT. All right.

[Exhibit placed before the witness.]

By Mr. KENNEY:

Q. Officer Barbarick, do you recognize Government's Exhibit No. 2?

A. I do.

Q. Where have you seen this before?

A. This was removed from the—underneath the floormat of Mr. Watson's vehicle on the 23rd of August.

Q. Was this removed by yourself?

A. Yes, it was.

Q. Would you look inside the envelope, the contents?

145 A. I am removing two envelopes from the inside of the first envelope. The first envelope is addressed to Marlene M. Steinberg, S-t-e-i-n-b-e-rg, 12407 Ohio, No. 2, West Los Angeles, California 90025. From that envelope, I am removing a Bank of America credit card, No. 4024 682 187 691, good through 8–73, in the name of Marlene M. Steinberg. My initials, the date 8–23–72.

Q. You initialed those at the time you searched the vehicle?

A. That is when I recovered the credit card, yes, sir.

The second envelope is addressed to a Kenneth Sorensen, S-o-r-e-n-s-e-n, 12118 Ohio, West Los Angeles, California 90025.

I am removing a Bank of America credit card, No. 4024 688 038 351, good through 8–73, in the name of Kenneth Sorensen, with my initials and date of 8–23–72.

Q. Was anything else found in the car in question?

A. No.

Q. After these items were found, what, if anything, did you do with the defendant?

A. He was transported to my office or the Postal Inspector's office in Los Angeles at Fifth and Grand on the second floor.

Q. And how was he transported?

146 A. Postal Inspector's radio unit.

Q. Were you in that car?

A. I was, yes.

Q. During the time that you transported the defendant, did you engage in a conversation with him?

A. Yes, we had a conversation.

Q. What, if anything, did you say?

A. Well, small talk more than anything else, How have you been, what has been happening and so on. And Mr. Watson talked to me.

Q. What statement, if any, did he make to you?

A. He said, "Frank, I want to help you out in this case."

Q. And what did you say to him in response to that?

A. Well, I told him he could help us, but anything he did help us with, the only thing I could say about it at that time, that it would be brought to the attention of the U.S. Atorney.

Q. After he was put in the car, where was he transported to?

A. To the Postal Inspector's office.

Q. And where is that located at?

A. Fifth and Grand, Los Angeles, second floor.

Q. And once Mr. Watson was brought to the Postal

147 Inspector's office, where was he taken then?

A. To my office.

Q. And where is that located in the building?

A. The second floor. It would be the northwest side of the building, I would say.

Q. And did you have a conversation with Mr. Watson, once he was in your office?

A. I did.

Q. Who initiated that conversation?

A. I initiated the conversation.

Q. What did you say?

A. I asked him about the—first of all, I again advised him of his constitutional rights. He said, "I know my constitutional rights, Frank."

And I said, "You still don't have to say anything unless you want to."

Then I asked him about the case, the credit cards—and Mr. Watson stated that he declined to make any statements which would incriminate him, other than to—the source of the cards themselves, how he had obtained the cards.

Q. Now, what cards was he talking about?

A. The credit cards that were given—well, one was given to Mr. Khoury and the two that I recovered from the vehicle.

Q. What did he say in reference to these credit cards?

148 A. That he had received them from a party by the name of John. A male Negro that lived on Mariposa, the address is 800 North Mariposa Avenue.

Q. Did he tell you how John came into these credit cards?

A. He did.

Q. What did he say?

A. He stated that John had obtained the cards from postal employees.

Q. Did he say on what date he had obtained the cards?

A. No, he didn't.

Q. Did you make any promises to the defendant in this regard?

A. No, I did not.

Q. Did you use any threats?

A. No, I did not.

Q. Did you promise him any leniency in this regard?

A. No, I did not.

Q. What, if anything, specifically, did you tell him?

A. The only thing I stated was that what he did—what he said—what assistance he gave us, would be brought to the U.S. Attorney's attention.

Q. Subsequent to the defendant's arrest, did you con-

149 duct an investigation into these credit cards?

A. Yes.

Q. And what did your investigation turn up?

Mr. NASATIR. Objection, hearsay, Your Honor, and irrelevant.

The COURT. Sustained.

Mr. KENNEY. Your Honor, if he conducted—may I address myself to that point?

If he conducted the investigation himself, I would think he would be able to testify as to the results of his investigation; would he not?

The COURT. Well, you are asking for a conclusion in a very conclusionary way. I mean, what might be the answer to that question, I don't know. But you can ask him what he did and what happened, but your question is calling for a conclusion.

Mr. KENNEY. Thank you, Your Honor.

By Mr. KENNEY.

Q. In conjunction with these credit cards, after the arrest of the defendant, what, if anything, did you do?

A. Checked the credit cards out to ascertain—how they were obtained and also when they were mailed and if the customer received the credit cards in the mail.

Q. And what was the result of this inquiry?

150 A. That they were mailed around August 14th, by the Bank of America Credit Card Section, and the customers had not received, nor given anybody permission to possess the credit cards.

Mr. KENNEY. Your Honor, I have no further questions of this witness.

The COURT. You may cross-examine.

Mr. NASATIR. For the record, I would ask that the last statement go out as hearsay.

The COURT. Well, you stipulated to the same, so I think it is exercising futility in the trial——

Mr. NASATIR. May it go out, Your Honor?

The COURT [continuing]. To try to distinguish between the niceties of the law and the stipulation.

Mr. NASATIR. I would like it to go out.

The COURT. Denied, for the reasons I have stated.

CROSS-EXAMINATION

By Mr.NASATIR:

Q. Mr. Barbarick, when Mr. Khoury first called you concerning the credit card in question in this case, the Ahmad credit card?

A. Yes.

Q. He told you that he had it; is that correct?

151 A. I beg your pardon?

Q. He told you that he had the card already or was he going to pick it up at some time?

A. No, he had information on the card at that time.

Q. All right. And he was going to pick it up at some later time; is that correct?

A. Yes.

Q. And the next day, is that when he brought the card to——

A. No, when he contacted me was on the 17th, the first time. The second time was later that evening he brought the card to me.

Q. He brought the credit card to you later that evening?

A. Yes.

Q. Now, Mr. Khoury told you that he got the card from Mr. Watson; is that right?

A. That's right.

Q. Now, other than Mr. Khoury's word as to this specific credit card, you had no other information concerning that card at that time, did you, sir, other than what Mr. Khoury had told you?

A. The first time or the second time?

Q. The first time.

A. The first time, no.

152 Q. Other than the fact, the second time, that the card had been stolen from the mail, you had no other information concerning that card other than what Mr. Khoury told you; is that correct, sir?

A. That's right.

Q. Now, after Mr. Khoury brought you this credit card, what did you do with the card physically?

A. Well, I checked the card.

Q. You checked the card.

Did you check it for fingerprints?

A. No. I checked it through the Bank of America Credit Card to determine whether the customer had received it.

Q. And the customer had not, as far as you knew; is that right?

A. That is right.

Q. And that is what we stipulated to here in this trial?

A. Right.

Q. Other than that fact, did you run the card for fingerprints?

A. I did not, no.

Q. Did you submit the card to be run for fingerprints?

A. It was turned over to Inspector Higgins, who is our credit card inspector, who handles credit cards.

Q. Now, the second time Mr. Khoury contacted you,

153 was when, sir?

A. It was the 21st of August.

Q. Of August?

A. Yes. This is after the 17th, you mean?

Q. Right.

A. Yes.

Q. Let's talk about the17th for a second.

The second time he contacted you, he brought the card and said, "I received this from Henry Watson"; is that right?

A. Yes.

Q. I think I have asked this, and if I have, I am sorry. I don't mean to be repetitious.

Other than what Mr. Khoury said and the fact that you called and found out that the card never reached its owner, you knew nothing else about that card; is that right?

A. That is all.

Q. You took Mr. Khoury's word for the fact that Mr. Watson had given it to him at that time; is that right?

A. That is right.

Q. Now, the next time you met Mr. Khoury—or talked to Mr. Khoury about this case, was the 21st; is that right?

A. That's right.

154 Q. And Mr. Khoury set up a meeting he said with Mr. Watson; is that correct?

A. Well, he stated that Mr. Watson wanted to meet him, yes.

Q. All right.

Was it your instructions to Mr. Khoury on the 17th, that he should set up a meeting with Mr. Watson?

A. Yes, it was prearranged that day, on the 22nd.

Q. You told Mr. Khoury, in other words, to try and set up a meeting with Mr. Watson and an agent of your Postal Service, who is a woman named Mrs. Roos?

A. Roos.

Q. Roos, I am sorry.

A. Yes, we had a prearranged meeting.

Q. But, what I am trying to get at, Mr. Barbarick. You told Mr. Khoury to set up the meeting; right?

A. After we received information that Mr. Watson wanted to turn over some credit cards to him.

Q. Yes, after Mr. Khoury told you that Mr. Watson wanted to turn over credit cards to him?

A. That's right.

Q. Mr. Khoury told you that Mr. Watson had more credit cards and wanted to turn them over to him, Mr. Khoury; is that right?

155 A. That's right.

Q. And you told Mr. Khoury, "We will set up a meeting with him and we will get the credit cards"; is that correct?

A. That's right.

Q. And that is the meeting that Mr. Khoury set up on August the 21st; is that correct?

A. No, the 22nd was when the meeting was set up for.

Q. The first meeting was set up?

A. The first meeting, that is right.

Q. And Mr. Khoury said that he talked to Mr. Watson and a meeting was arranged with the police woman—of course, Mr. Khoury wasn't supposed to disclose this—with a police woman and Mr. Khoury at the Ramada Inn; is that right?

A. That is right.

Q. And did he give you a specific time the meeting was set up?

A. In the morning, on the 22nd.

Q. And on reliance of Mr. Khoury's statement, you and how many officers went to the Ramada Inn?

A. Five. That is including Inspector Roos.

Q. Including Inspector Roos, who is the woman?

A. Yes.

Q. Five agents went to the Ramada Inn that morning?

A. I believe five.

156 Q. In fact no meeting took place, did it?

A. No meeting took place on the 22nd.

Q. After Mr. Khoury had told you that a meeting would take place, no meeting did take place; is that correct?

A. No meeting took place.

Q. Then you asked Mr. Khoury to contact Mr. Watson again, did you not, sir?

A. I don't know if that was the first time or second time. Mr. Watson called himself, too.

Q. Did he call you?

A. No—according to Mr. Khoury, I should say.

Q. Mr. Khoury told you that Mr. Watson called; is that right?

A. Yes, and then he talked to Mr. Watson.

Q. Where was Mr. Watson supposed to have called Mr. Khoury?

A. At the Ramada Inn.

Q. Were you there when this call was supposed to take place?

A. No.

Q. You didn't see this call come in or Mr. Khoury pick up a phone at the Ramada Inn, did you, sir?

A. No.

Q. Of course, if you didn't see the call come in, you
157 don't know for a fact of your own knowledge whether or not that call was ever received, do you, sir?

A. Other than what Mr. Khoury told me, that is correct.

Q. Other than what Mr. Khoury told you, of your own knowledge, you don't know whether that call actually came in or not?

A. And Inspector Roos stated that Mr. Khoury had called and talked to Mr. Watson—or called and talked to somebody on the phone.

Q. Did Mrs. Roos listen in on that phone call?

A. No, she was there. She didn't go to the phone.

Q. That is all she saw?

A. Yes.

Q. She didn't listen to that phone call, did she?
A. No, she didn't listen on the phone.
Q. Now, Mr. Barbarick, the second meeting that was set up at the Ramada Inn, you told Mr. Khoury to get ahold of Mr. Watson; is that right, sir?
A. To set up another meeting, yes.
Q. Did Mr. Khoury call you back?
A. I talked to him that day, yes, on the 22nd.
Q. He called you back at the Ramada Inn?
A. No, I was at the Ramada Inn.

Q. And Mr. Khoury told you and told you that another meeting was set up; is that right?

158

A. No. Mr. Khoury didn't call me. We met and talked and he told me that another meeting was set up for the 23rd, the next day.
Q. On the 23rd, the next day, at the Ramada Inn; is that right?
A. Yes.
Q. And on what reliance of what Mr. Khoury said about meeting the next morning, you and the five agents went back to the Ramada Inn; is that right?
A. Yes.
Q. And in fact, on the 23rd, no meeting took place?
A. At the Ramada Inn, no meeting took place, yes, sir.
Q. No meeting took place?
A. At the Ramada Inn.
Q. After that, Mr. Khoury was supposed to set up another meeting with Mr. Watson; is that correct?
A. Yes.
Q. Did you so instruct him?
A. I think this meeting was set up by Mr. Watson, according to Mr. Khoury.
Q. According to Mr. Khoury?
A. Yes.

Q. And he, Mr. Khoury, said that Mr. Watson set up this meeting at Ship's Restaurant; is that right?

159

A. That's right.
Q. But you didn't hear Mr. Watson set up this meeting, did you?
A. No, I did not.

Q. None of your agents heard Mr. Watson set up this meeting, did they?
A. No, they did not.
Q. Now, between the 17th and the 23rd, did your credit card come back from being analyzed for fingerprints?
A. No.
Q. Do you know whether in fact it was submitted to be analyzed for fingerprints?
A. I believe it was. I would have to check with Inspector Higgins on that.
Q. But at all times you had that credit card in your possession, did you not, between the 17th and the 23rd?
A. Myself or Inspector Higgins, yes.
Q. Your service?
A. Yes.
Q. And then we go to the meeting at Ship's Restaurant; is that right?
A. On the 23rd, right.

Q. And the beeper signal to which you referred, was to be given to you when the informant found out that Mr. Watson had the credit cards in his possession, is that right?

160

A. That's right.
Q. Did you instruct the informant, Mr. Khoury—and when I am using informant, you understand, I am talking about Mr. Khoury?
A. Yes.
Q. How do you pronounce his name?
A. Khoury.
Q. And were these the instructions that you gave to Mr. Khoury?
A. That if Mr. Watson had in his possession credit cards and identification, that he was to signal Inspector Roos or Gillespie in the restaurant; and they would alert the beeper, which in turn would alert us, the inspectors that were outside.
Q. And that beeper signal then came to you; right?
A. Yes, it did.
Q. Now, to your knowledge, no one heard what went on when Mr. Khoury and Mr. Watson were sitting at that table, did they?
A. No, other than a young lady that was with them.

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Q. There was a young lady with them, but none of the agents overheard the conversation?

161 A. No.

Q. You certainly didn't, did you?

A. No.

Q. You have radio equipment that you can affix to informants in order to overhear conversations, do you not, with the Postal Service?

A. We have access to them, yes.

Q. They are called car Transmitters, are they not, sir?

A. Well, there is a number of names for them.

Q. Do you have such a transmitter?

A. We have access to one out of Washington, D.C.

Q. Do you know what I am talking about?

Mr. KENNEY. Your Honor, I object to this line of questioning. I have let it go on, but I believe it is kind of time consuming and I think it is certainly irrelevant what type of——

The COURT. The objection is sustained.

Mr. NASITIR. Your Honor, I believe it is important to our case. I think it is perfectly relevant and the relevance will be seen in one minute.

The COURT. The objection is sustained.

By Mr. NASATIR:

Q. Was your informant, Mr. Khoury, outfitted with

162 one of these transmitters that day?

Mr. KENNEY. Your Honor, same objection.

The COURT. No, he has got a right to answer this.

By the WITNESSS

A. No.

By Mr. NASATIR:

Q. When you arrested Mr. Watson that day, your arrest then was based on what you told us so far; is that right?

A. Yes.

Q. Your arrest was based on the fact that you discovered that credit card you had was stolen and the fact of what Mr. Khoury had told you concerning Mr. Watson?

A. That is right.

Q. When you arrested Mr. Watson, did you conduct a search of Mr. Watson's person?

A. Mr. Watson was carrying a——

The COURT. Answer yes or no.

By the WITNESS:

A. Yes.

By Mr. NASATIR:

Q. Did you find any stolen credit cards on Mr. Watson's person?

A. No, we didn't.

Q. Then you searched the car; is that right, sir?

163 A. That's right.

Q. And when you found the envelopes—the envelope that you told the jury about today, where did you find it?

A. It was under the floormat on the driver's side.

Q. How long did you search prior to finding that envelope?

A. A short time.

Q. Could you estimate for us?

A. Less than 15 minutes, I guess, within 15 minutes.

Q. Could it have been as long as 15 minutes?

A. I think it was less than 15 minutes. It was a very short time, I know that.

Q. When you found the cards, were they all within the envelope?

A. Yes.

Q. Just as the prosecutor handed them to you today?

A. Yes, they were.

Q. And the fact that the envelope was under the floormat, was not visible to you, was it?

A. No, it was not.

Q. Where did you first look in the car? Did you look in the glove compartment, first?

Mr. KENNEY. Your Honor, I think this line of questioning is irrelevant.

164 The COURT. I think so, too.

Mr. NASATIR. Your Honor, the charge is possession with knowledge in this case.

The COURT. But I am not going to debate that with you, and I sustain the objection.

By Mr. NASATIR:

Q. Were the credit cards visible to you under the floormat?

A. No.

Q. You couldn't tell if the credit card—you had to look, pick up the floormat and that is when you found out that there was something underneath the floormat; is that right?

A. That's right.

Q. You couldn't tell by looking at the floormat just from the outside, that there was something underneath it, could you?

The COURT. This has been asked and answered.

Mr. NASATIR. Excuse me, Your Honor?

The COURT. He couldn't see the envelope or the cards, he has already said that.

By Mr. NASATIR:

Q. Now, after you found these credit cards—may I have the exhibit shown to the witness, by the way?

165 The COURT. Yes, sir.

Mr. NASATIR. They are already before him, thank you.

By Mr. NASATIR:

Q. Mr. Barbarick, there seems to be some purple matter on the outside of those envelopes and on the edges of some of the matter contained in those envelopes. Was that on the envelope when you found it?

A. No.

Q. What is that, sir?

A. This is an anhydrite process that is conducted by our laboratory.

Q. And that is to do what, sir?

A. To determine fingerprints.

Q. To your knowledge, were Mr. Watson's fingerprints submitted to your laboratory along with that envelope?

A. As I stated, Inspector Higgins—I turned this stuff over to him. I am sure this is the normal policy to submit this information or the evidence to the crime laboratory.

Q. Right.

And a set of Mr. Watson's fingerprints would have been submitted to your crime lab also; is that right?

A. Yes.

166 Q. To your knowledge, were a set of Mr. Khoury's fingerprints submitted to your crime lab?

The COURT. At what time?

Mr. NASATIR. At any time, Your Honor. To be compared——

The COURT. Do you mean prior to the arrest or do you mean after the arrest?

Mr. NASATIR. Either prior to or after the arrest.

The COURT. All right.

By Mr. NASATIR.

Q. Let me ask it this way, Your Honor. That is complex.

The COURT. No, that is all right. You understand the question?

The WITNESS. Yes, Your Honor, I do.

The COURT. In other words, tell us when you submitted these to the laboratory and when you got back any information. Don't say what you got back, but if any information came back.

The WITNESS. As I stated before, Your Honor, Inspector Higgins submitted these to the crime laboratory, I didn't.

By Mr. NASATIR.

Q. Do you know whether or not a set of Mr. Khoury's fingerprints were submitted to your crime laboratory?

167 A. I don't know whether they were or not.

Q. A set of Mr. Khoury's fingerprints is available to you, is it not, to your knowledge?

Mr. KENNY. Your Honor, once again this seems irrelevant to me to the matter at hand.

The COURT. Sustained.

Mr. NASATIR. Your Honor, I will be glad to call Mr. Barbarick in my case, if I have to. I am trying to save time by asking these questions now.

The COURT. All right.

I sustained the objection.

It is not a matter of who called the witness. I just sustained the objection on the fact that it is immaterial.

Mr. NASATIR. May I ask to to approach the bench, Your Honor?

The COURT. No, sir. We are going to adjourn at 4:30 and I think your examination can continue.

By Mr. NASITIR.

Q. Mr. Barbarick, during one of Mr. Khoury's calls to you during this period, from August 17th to August 23rd, you stated that Mr. Watson would be driving a car, did you not?

A. Yes.

Q. Or was driving a car?

168 A. Yes.

Q. Did he say that Mr. Watson was driving a car?

A. Yes.

Mr. KENNEY. Your Honor, this is outside the scope of direct. I don't think counsel is allowed to go into this.

The COURT. Overruled.

By Mr. NASATIR:

Q. Did he describe the car to you?

A. It was a Chevrolet Montclaire, beige in color, a rental vehicle.

Q. Is that how Mr. Khoury described it to you?

A. No, he said that is what it is. He told me it was a Montclaire, beige in color, Chevrolet.

Q. Did he give you any other information about the car?

A. The license number of the car.

Q. You knew the license number of the vehicle?

A. Yes.

Q. And this was prior to the arrest on August 23rd; is that right?

A. Yes.

Q. Now, when you went down in the car to the police station, you say that Mr. Watson advised you or addressed you as Frank; is that correct?

169 A. Yes.

Q. That is your first name, is that correct?

A. Yes.

Q. You know Mr. Watson from a long time back, do you not?

A. Yes, I do.

Q. Mr. Watson has been an informant for you, has he not?

A. Yes, he has.

Q. In fact, Mr. Watson has been an informant for you for the past year and a half; is that correct?

A. Yes, he has given us information, yes.

Q. Approximately how many occasions have you talked to Mr. Watson in the past year and a half, would you say?

A. Four, five, maybe more. He used to call off and on up until just recently.

Q. And in fact, Mr. Watson's information has resulted in some convictions for your service, has it not?

A. It has.

Q. And you worked very closely with Mr. Watson, when he gave this information to your service concerning those convictions, did you not?

A. By "closely," I don't understand that question.

Q. Well, you met with Mr. Watson on a number of occasions, didn't you?

170 A. We talked on the phone, I believe, more than we met.

Q. And you talked on the phone a lot more than five times during the past year and a half?

A. Right—it is hard, you know—we talked on the phone a number of times, I will put it that way.

Q. Would it be as many as 50 times?

A. No, no.

Q. As many as 25 times?

A. I wouldn't know, Counselor. I say we talked a number of times on the phone. It is hard to say—it is like five, maybe 10 times. It is hard to say.

Q. When Mr. Watson gave you information in those—during the period he was acting as an informant for you and in the cases wherein convictions were obtained—you considered him a reliable informant, did you not?

A. Yes.

Q. You considered him a good and helpful informant; is that correct?

A. At that time, yes.

Q. Now, when you were traveling to your office from Ship's Restaurant in Los Angeles, were you making any notes of your conversations?

A. No, we were just talking.

171 Q. Do you have any written record of that conversation?

A. Not in the car, no, sir.

Q. How many arrests have you made since August 23rd, Mr. Barbarick?

A. A number of arrests.

Q. How many would you say?

The COURT. I think that is immaterial.

By Mr. NASATIR:

Q. Well, in all of those arrests, did you ride to the station with the suspect?

A. No, not all the time.

Q. Would you say in half the time?

Mr. KENNEY. It would seem to me it is still immaterial to the case at hand, Your Honor.

The COURT. Sustained.

Mr. NASATIR. Testing credibility and memory, Your Honor.

The COURT. These are about matters which are purely collateral with this and I don't think that they test memory or credibility.

By Mr. NASATIR:

Q. Let me try to get at it another way, Mr. Barbarick.

You testified as to what Mr. Watson told you in the car, purely from your memory; is that correct?

172 A. Yes.

Q. You have investigated since—two months, I guess it is almost two months to the day—you investigated many, many matters, many other matters, have you not?

A. I have investigated a number of cases, yes.

Q. And you have talked with many, many other defendants, have you not?

A. Yes.

Q. Do you remember verbatim what each of those defendants told you, without taking notes and without making a written record?

A. If I knew them as well as I know Mr. Watson, yes, I would remember, because it is something that—I remember people that I have known for quite some time. I remember what they say.

Q. And you remember verbatim what Mr. Watson told you in the car?

A. Well, as I stated, small talk in the car.

Q. Now, small talk in the car, you wouldn't remember necessarily each and every word that Mr. Watson told you?

A. No, because a number of things were stated.

Q. All right.

And you really couldn't tell us——

Mr. KENNEY. Your Honor, he seems to be arguing

173 with the witness.

The COURT. Overruled.

By Mr. NASATIR:

Q. You really couldn't tell us the rest of the small talk in the car other than the statement you gave to the prosecutor concerning what Mr. Watson said about helping you; is that right?

A. Well, he related cases and stuff, about the people that he helped——

Q. Can you remember word for word what he said; is what I am trying to get at?

A. No, not word for word, no.

Q. Is it possible, Mr. Barbarick, that Mr. Watson, instead of saying, "I would like to help you in this case, Frank," said, "I would like to help myself, Frank"?

A. No. He stated he would like to help me.

Q. There is no possibility that the word "myself" could be in your mind replaced with the word "you"?

A. No, because he stated, "I would like to help you in this case."

Q. But no written record was made of that statement?

A. No, it wasn't.

Q. That is not contained in the written report that you have here on file; is that correct?

174 A. No.

Q. And that is not contained in any notes that you took?

A. No.

Q. It's not written down anywhere?

A. No.

Q. When you got to your office, did you talk about other things other than the fact as to where the credit cards were obtained?

A. We could have had conversation of other things, that he was going to help us with; another case, other people that were involved, yes.

Q. You could have had conversations about other cases that Mr. Watson was going to help you with; is that right, sir?

A. Yes.

Q. And Mr. Watson was going to act as an informant in that cast; is that correct?

A. Yes.

Q. Now, when Mr. Watson was in your office and supposedly made the statement concerning where he got the credit cards, did you make any notes of that conversation?

A. If I may explain this, Your Honor?

The COURT. No, just answer the question.

By the WITNESS:

A. No.

By Mr. NASATIR:

Q. There were no notes made; is that right, sir?

A. No.

Q. And there was no verbatim transcript—there wesn't a court reporter taking down every word Mr. Watson said, like there is here today, sir, was there?

A. No. You mean notes—there were names written out, that part of it.

Q. Right, names written out. But not any notes as to the words that Mr. Watson was speaking; is that right, sir?

A. That's right.

Q. And was Mr. Watson asked to sign a statement concerning what he told you?

A. No.

Q. Was he asked to write out the statement in his own words?

A. No.

Q. Do you have a tape recorder in your office?

A. No, I do not. I have a dictaphone, but no tape recorder.

Q. You do have a dictaphone?

A. Yes, I do.

Q. That is what I meant.

Was Mr. Watson asked to tell his statement into the dictaphone?

A. No, he wasn't.

Q. Now, without taking notes and without having a court reporter there and, of course, a court reporter wasn't there with you in the car either, was there?

A. No.

Q. And without having a verbatim record of Mr. Watson's statement, and having worked on many cases since that time, could you state exactly the words that Mr. Watson told you in that office; is that what you are telling us, sir?

A. I could come very close to the statements that were made in the office.

Q. But that is in your opinion; is that right?

A. In my opinion, yes.

Q. Now, getting back to Ship's Restaurant, just for a moment, Mr. Barbarick.

When you asked Mr. Watson for permission to search his car, he said in substance or effect words "Go ahead," there is nothing in there?

A. Yes, he said he didn't have anything in there.

Q. He said there was nothing incriminating in his car, so why don't you go ahead and search it?

A. Yes.

Q. And he gave you permission to search it?

A. Yes.

Q. And he gave you the keys?

The COURT. Did he use the word "incriminating"?

The WITNESS. No, not at that time, Your Honor.

By Mr. NASATIR:

Q. He didn't use the word "incriminating"?

A. No, he didn't.

Q. What did he say?

A. He just said—I asked him, I said, "Is there anything in the car?"

And he said, "No, Frank, there is nothing in there."

And I said, "You know, if there is, it is going to go against you."

And he said, "I know that."

Q. When Mr. Watson was in your office at the Postal Inspector's office, did he use the word "incriminate"?

A. Only when he was again advised of his constitutional rights in a statement that he made to me.

Q. What did he say, sir?

A. Well, in substance, let's see:

"The defendant declined to make any statements which would incriminate him, other than to say the source of his procurement of the credit cards, stolen from the mail, was a person by the name of John."

Q. Did he use the word "incriminate"?

A. Yes, I think he did.

Q. Did he use the word "procurement"?

A. I believe he did.

Q. Are you sure about that?

A. Yes, I believe he did.

Q. Are you sure?

A. Yes, I believe he did.

Q. Well, what I am trying to say is: Are you sure he used the word "procurement"?

A. The word—I probably wouldn't have typed it out that way, unless he used it. So he used that word.

Q. So it is your testimony that he definitely used the word "procurement"?

A. As far as I can remember, he used that word, yes.

Q. Is it possible, Mr. Barbarick, that without notes, without a written record, without a transcription, without a court reporter, that your memory could be faulty in that regard?

A. Not really——

Q. Is it possible, that is my question?

Mr. KENNEY. Your Honor, he is arguing with the witness.

The COURT. Yes, you are arguing, now.

179 The objection is sustained.

Mr. NASATIR. May I have one moment, Your Honor?

The COURT. Yes.

[Brief pause.]

By Mr. NASATIR:

Q. Mr. Barbarick, when did you open the envelope that you found underneath the floorboard in the car?

A. I believe it was at the office.

Q. You opened it at your office in the Postal——

A. I believe it was at the office.

Q. Was the envelope sealed or was it not sealed?

A. It was sealed.

Q. It was sealed?

A. Yes.

Q. So you took a letter opener and opened the envelope with the credit card——

A. It was open, yes.

Q. At your office; is that correct?

A. Yes.

Q. You didn't open the letter with those credit cards at the scene, did you?

A. No, I don't believe so. It was at the office.

Q. And at the scene—I mean by "at the scene," Ship's

180 Restaurant on La Cienega?

A. Right.

Q. And the envelope was taken with you and Mr. Watson down to your office and opened at the office?

A. That is right.

Mr. NASATIR. No further questions.

The COURT. All right.

Ladies and gentlemen, we are going to adjourn for the evening. It is my duty to admonish you that it is your duty not to converse or otherwise communicate among yourselves or with anyone else upon any subject touching the merits of this case on trial. And not to form or express any opinion on the case until after it has been finally submitted to you for your verdict.

Now, this is simply telling you that you should not arrive at any kind of a judgment in your own mind, until you have heard the whole case.

You should not discuss it with other people or even among yourselves, until you have heard all the evidence, you have heard all the arguments of counsel, which arguments will help orient the testimony, so that you get a complete story in the version of the respective sides; and until after you have heard the instructions of the Court.

Now, if you were on trial, charged with a serious of-

181 fense, you would want your jury to keep an open mind and to follow these instructions.

So let's give to the defendant in this case, the same kind of treatment that you would expect someone to give you if you were charged with this offense.

So now, gentlemen, may it be stipulated that the jury has been properly admonished and need not again be admonished at any time when they separate and leave the courtroom for a recess or otherwise, unless the Court is again asked to admonish the jury?

Mr. KENNEY. So stipulated, Your Honor.

Mr. NASATIR. So stipulated, Your Honor.

The COURT. May it also be stipulated that when we resume the trial before the jury, that all the jurors are present and in the box, unless the contrary is called to the attention of the Court?

Mr. KENNEY. So stipulated, Your Honor.

Mr. NASATIR. So stipulated, Your Honor.

The COURT. And one more, gentlemen: May it also be stipulated that at any time we proceed in this case in open court, that the defendant is present with his counsel unless the contrary is called to the attention of the Court?

Mr. NASATIR. So stipulated, Your Honor.

Mr. KENNEY. So stipulated, Your Honor.

Supreme Court of the United States

No. 74–538

UNITED STATES, PETITIONER

v.

HENRY OGLE WATSON

Order Allowing Certiorari. Filed February 18, 1975.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

Mr. Justice Douglas took no part in the consideration or decision of this petition.

U.S. GOVERNMENT PRINTING OFFICE: 1975